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Chair

Mr. Dan Ruimy

Standing Committee on Industry, Science and Technology

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● (1500)

[*Translation*]

The Chair (Mr. Dan Ruimy (Pitt Meadows—[illegible] Ridge, Lib.)): Good afternoon everyone. Welcome to Montreal.

Pursuant to the order of reference adopted on Wednesday, December 13, 2017, and as prescribed in section 92 of the Copyright Act, we are here today to conduct a statutory review.

Today marks our first meeting for the purposes of that review. We are hearing from Richard Prieur, Executive Director of the Association nationale des éditeurs de livres; Guillaume Lecorps, President of the Quebec Student Union; and Benoit Prieur, Executive Director of the Association des distributeurs exclusifs de livres en langue française.

You aren't brothers, are you? No.

Also joining us is Nicolas Sapp, from the University Secretariat at Concordia University. He is a lawyer and partner at ROBIC, LLP.

You will each have five to seven minutes for your presentation. After that, we will move into questions. You can speak in English or French, as we have interpreters on hand.

We will start with the Executive Director of the Association nationale des éditeurs de livres, Richard Prieur.

You may go ahead. You have seven minutes.

Mr. Richard Prieur (Executive Director, Association nationale des éditeurs de livres): That's reassuring, Mr. Chair. I thought I had just five minutes, so I won't go quite as fast.

Mr. Chair, members of the committee, thank you for inviting us to appear before you today.

I am the executive director of the Association nationale des éditeurs de livres, or ANEL for short. We represent a hundred or so of Canada's French-language publishers, large and small, scattered across four provinces.

Joining me is our President, Nicole Saint-Jean, and Éveline Favretti, a project manager at ANEL.

Canada's francophone publishers publish more than 6,000 titles every year, ranging from novels, how-to manuals, and poetry to essays, school manuals, scientific textbooks, and art books.

ANEL has always called on the federal government to reassert the importance of copyrights and strengthen the country's copyright regime by bringing Canada's legislation in line with global trends, so that creators are supported by a legal framework that provides the stability to innovate in creating, producing, and distributing Canadian books.

In 2012, we proposed a number of amendments to Bill C-11, in our brief to the relevant parliamentary committee. None of those amendments was implemented. We hope that our efforts today will be more fruitful. We hope that, this time around, the government will be more receptive to the concerns of the cultural sector and that the Department of Canadian Heritage will contribute to the review in a robust way.

To that end, since 2012, we have repeatedly called on the department to undertake a comprehensive study of the impacts stemming from the review of the Copyright Act. That study now seems to be materializing. Our only fear is that we will not know the outcome until after this series of consultations is complete.

I have a few points I'd like to discuss with you. First of all, I will share with you the impact of the act internationally, taking into account the merits of cultural diplomacy. Next, I will illustrate what the act has failed to achieve, as well as the damage it has done. I will conclude with what our publishers hope to see as a result of this review.

From an international standpoint, Canada's legislation is to be avoided at all costs. ANEL participates in a variety of international trade fairs and, for more than 30 years, has taken part in the prestigious Frankfurt Book Fair, where Canada will be the guest of honour in 2020.

We engage in cultural diplomacy, but everywhere we go these days, particularly in Europe, our hosts are palpably concerned about the damage Canada's legislation is doing. The critics are unanimous and include France's publishers association—the Syndicat national de l'édition—the Federation of European Publishers, the International Federation of Reproduction Rights Organisations, known as IFRRO, which brings together collective management organizations around the world, and the International Publishers Association, to which we belong and whose vice-president you will be hearing from tomorrow, I believe.

Canada's legislation is the model to avoid. Even worse, it contaminates the sector by encouraging other countries to integrate copyright infringement exceptions in their regimes, such as the fair dealing for education provision.

What the 2012 legislation has failed to do is curb piracy. Not only is piracy proliferating, but the tools deployed to deter violators are ineffective. By placing the burden of proof on owners whose copyright has been infringed, by keeping penalties to a minimum, and by imposing an obligation to notify on Internet service providers through the notice and notice regime, lawmakers have missed the mark. If the government is unable to tighten the rules to combat piracy, the only alternative will be to expand the private copying regime.

Now let's turn to the damage Canada's legislation has done.

First of all, the act has led to the excessive involvement of the courts in copyright matters. Our copyright collectives are dealing with a growing number of cases. Money is being gobbled up in legal fees to defend the rights of copyright owners and publishers. At the same time, universities—who could put the money to better use—are also pouring money into court actions that the Copyright Modernization Act should have sought to prevent.

As a result, these court actions are weakening copyright collectives, which are being egregiously depicted as greedy, when their mission is simply to ensure that rights holders are fairly compensated.

Unlike what is happening in the rest of Canada, in Quebec, the copyright collective Copibec is managing to negotiate agreements with the vast majority of Quebec universities and colleges, as well as the education ministry. Even though the compensation set out in the agreements is being scaled back, the fact remains that Quebec has shown a willingness to respect the role of copyright collectives.

● (1505)

Finally, let's discuss the exceptions, specifically, the fair dealing exception for the purpose of education.

On this issue, lawmakers shirked their responsibility to deliver clear legislation. How is education defined? That question remains unanswered. How is it that the reproduction of short passages provided for in the exception has led to such explicit interpretations as that of Université Laval, which set its threshold at 10% of a work or an entire chapter? The door is wide open to the most unreasonable interpretations. Some institutions have even become experts at teaching how to stretch out what constitutes a short passage. What's more, some in the educational community claim that publishers have seen their profits rise since the legislation was passed. Their analysis of the figures, however, bears greater scrutiny.

What do we expect from lawmakers? A few things, at the very least. We expect them to do their job and work towards ending piracy. We expect them to give Canada's legislation some teeth. If lawmakers cannot manage to adopt even potential solutions, we expect them to finally recognize that private copying compensation is not a tax, but a way to support culture. We expect them to review the principle of fair dealing for the purpose of education by setting out a narrow definition for education and restricting the freewheeling interpretations of the educational sector. Lastly, we expect lawmakers to recognize the vital role copyright collectives play on behalf of creators and to accept that mandatory exceptions, such as fair dealing for the purpose of education, must go hand in hand with mandatory compensation.

Thank you.

● (1510)

The Chair: Thank you very much.

Next we will hear from Guillaume Lecorps, from the Quebec Student Union. You have seven minutes.

Mr. Guillaume Lecorps (President, Union étudiante du Québec): Good afternoon, Mr. Chair and members of the committee.

Thank you for having me today and for giving our union the opportunity to share the views of Quebec students on a very important issue, further to your review of the Copyright Act.

My name is Guillaume Lecorps, and I am the President of the Quebec Student Union. Established in 2016, our organization represents 80,000 students across the province of Quebec, from Rouyn-Noranda, Sherbrooke, and Gatineau to Montreal and Quebec City. Not only do we work with associations representing more than 200,000 of the province's university students through our committees, but we also work with a number of federal partners on issues of national importance that affect our members, including copyright.

The current review deals with numerous provisions, but my remarks will focus on a crucial concern to the student community: the principle of fair dealing for the purpose of education.

I'm going to use this opportunity today to discuss the important role of fair dealing from the student standpoint, the benefits of the fair dealing principle, and the various ways of managing copyright.

In a very important 2004 decision, the Supreme Court reiterated the need for the act to take into account two main pillars: the rights of copyright owners, so content creators, and the rights of users. Every single day, Quebec's students balance both of those elements in their dual role as creators and users of content. In fact, they were the ones who, through their campus associations, made it clear to us that they were interested in this statutory review.

Further to our consultations with those associations, Quebec's student community took a clear stand in favour of keeping the principle of fair dealing for the purpose of education as is. In particular, students felt that the principle had led to meaningful improvements in education quality, source availability, and the range of perspectives in universities.

Beyond the financial implications, which are nevertheless significant, Quebec students feel strongly about this issue because they want to make sure knowledge is as accessible as possible.

It is true that Canada's post-secondary students had access to a certain amount of information and knowledge prior to the introduction of the fair dealing provision for the purpose of education. It seems clear, however, that the provision has had a positive impact on both the quality and quantity of available sources in universities.

Keep in mind that this enhanced access to knowledge is the result of a tiny fraction of copyrighted works being distributed and that fair dealing should never be likened to property theft or piracy. The principle of fair dealing can be defined and controlled so as to allow for the fair compensation of copyright owners—compensation that is certainly important in an ever-changing knowledge-based economy.

The establishment of copyright coordination offices by post-secondary institutions such as Université Laval can be an effective way to ensure that the regime is implemented optimally. This approach is in no way intended to disregard the fair share of revenue copyright owners are entitled to for their content; rather, it is an effort to keep that revenue from hindering access to knowledge.

Furthermore, at a time when the Canadian government claims to want to increase the country's participation in the knowledge-based economy, it seems fitting to create a regime that encourages innovation and helps students reach their full learning potential.

The development of open education resources is another effective way of bringing copyright owners and content users together, while promoting content creation and fair distribution.

The Quebec Student Union's 80,000 members are well aware of the impact this legislation will have on them. That is also true for Quebec's university student population at large, which is keeping a very close eye on the issue.

They made it very clear to us that the federal government should prioritize fair dealing in order to make higher learning as accessible as possible, both quality-wise, in terms of education quality, and financially, as regards education affordability.

What's more, as both content creators and users, university students understand how important it is to ensure copyright owners are better compensated for the content they produce. Students, however, feel that the way to achieve sound public policy is to promote access to knowledge and fair compensation for copyright owners, without further straining a segment of the population that is already struggling financially, students.

The Quebec Student Union and its membership are of the view that the principle of fair dealing, as currently set out in the act, should be maintained further to the review being undertaken by the committee.

Thank you.

I would be happy to answer any questions you have.

The Chair: Thank you very much.

It is now over to Benoit Prieur, from the Association des distributeurs exclusifs de livres en langue française.

You have seven minutes, Mr. Prieur. You may go ahead.

● (1515)

Mr. Benoit Prieur (Director General, Association des distributeurs exclusifs de livres en langue française): Thank you, Mr. Chair.

Honourable members of the committee, thank you for having me.

I am here on behalf of the members of the Association des distributeurs exclusifs de livres en langue française, known as ADELF. We are a membership organization representing Canadian businesses that distribute French-language books in Canada.

Our membership generates $450 million in sales annually and is responsible for more than 700 jobs in Canada, mainly in the Montreal area.

ADELF's board of directors asked me to pass on one key recommendation: that the government keep the Book Importation Regulations, passed in 1999, intact.

I'd like to start by telling you a bit about book distribution and the members of our association.

Distributors are the main business partners of book publishers. Distributors bring publishers' books to the retail marketplace, in other words, booksellers, bookstore chains, school co-operatives, hardware stores, drug stores, big box stores, and websites. Amazon.ca is a client of all of our members.

Our members have distribution agreements with French-language book publishers not just in Quebec and other Canadian provinces, but also in every country of the Francophonie, including France, Belgium, and Switzerland.

ADELF's members bring nearly 42,000 new titles to market each year, and those are only French-language publications.

Our members' catalogues contain more than 703,000 French-language titles, which are available to every Canadian reader in every province. Those titles include bestsellers with tens of thousands of copies sold, but the reality is that bestsellers are the exception, accounting for less than 1% of titles. The majority of titles are sold in very small quantities. In fact, for nearly 90% of books sold in Canada, fewer than 500 copies each are put on the market.

Now, I'll say a few words about the relationship between book publishers and distributors.

In Canada, virtually all Canadian and foreign publishers sign an exclusive distribution agreement with their Canadian distributor. That means the publisher is giving the distributor the exclusive right to represent them in Canada. In other words, the bookseller or any other client retailer must source books from the distributor designated by the publisher in question.

Exclusive distribution has a number of key benefits. First, it helps foster strong distribution networks throughout the country, but, above all, it ensures access to a wide variety of titles across the country. With the assurance that they will reap the benefits of their investment, exclusive distributors can commit to providing greater support for difficult titles that are not guaranteed bestsellers, seeking out more remote and less accessible clients, and so forth.

Since 1999, the Government of Canada has protected the exclusive rights of book importers. The Book Importation Regulations and the Copyright Act help to protect against parallel importation. What is parallel importation? It is a practice whereby an institutional buyer or retailer sources copies through an unlicensed supplier, one who is not the exclusive distributor. Parallel importation undermines Canada's book distribution infrastructure, hindering access to a wide array of titles in Canada.

In order to receive protection under the Book Importation Regulations, distributors must adhere to certain criteria or standards, including specified retailer shipping time frames and Canadian pricing that takes into account the book's list price in the exporting country.

● (1520)

Canada is not the only country with rules protecting the exclusive rights of importers. Quite the contrary. Nearly every OECD country has such rules in place. It is standard practice.

In conclusion, I want to say that the members of the Association des distributeurs exclusifs de livres en langue française do not receive any funding from the Quebec or Canadian government, including the Department of Canadian Heritage and the Canada Council for the Arts. Conversely, we our counting on the federal government to establish a legislative framework that protects the exclusive rights of businesses, while encouraging innovation, creation, and risk-taking.

Thank you.

The Chair: Thank you very much.

I will now turn the floor over to Nicolas Sapp, from Concordia University.

You have seven minutes.

Mr. Nicolas Sapp (Lawyer, Partner, ROBIC, University Secretariat, Concordia University): Thank you.

Mr. Chair, honourable committee members, and members of the public, good afternoon. My name is Nicolas Sapp, and I am an attorney and a partner with the law firm ROBIC. I am not from the University Secretariat of Concordia University. I am here today speaking on behalf of Concordia University, Université de Montréal, and Université de Sherbrooke, which, combined, have approximately 150,000 registered students. These institutions are among Quebec's largest universities.

I thank you for inviting us to share our observations and recommendations.

As you know, the fundamental mission of universities is teaching and research. In this context, documentary resources are key elements that are vital to the whole university community. Quebec universities seek to provide accessible quality education to their students. Accessibility and quality are also two key elements as far as documentary resources are concerned.

Quebec universities are home to users, as well as to creators, authors, and publishers, who all own copyrights. Many of these members of the university community wear both hats. In this context, Quebec universities are extremely sensitive to copyright matters. They acknowledge and respect the rights of copyright owners, but they have an equally important interest in and for the rights of users.

The unique position of universities in copyright matters requires a contextual approach for the following reasons. Because of their roles and functions, Quebec university faculty members publish a large portion of the teaching material protected by copyright for the benefit of students. Faculty, researchers, and students throughout the world use research results to create new knowledge. The dissemination of research results enables students and researchers worldwide to have access to high-quality content, thereby allowing for the sharing of knowledge and the development of an innovative economy. Publications by researchers contribute to supporting the publishing industry.

Now let's turn to scientific publishing.

Scientific publishing is controlled by five major international publishers, which corner the market, having all of the attributes of an oligopoly. Depending upon the discipline, researchers are often required to publish with these publishers to obtain tenure and research grants. The publications of these publishing houses consume a significant portion of university library acquisition budgets and account for a large portion of texts that are put on e-reserve.

In certain cases, in addition to being obliged to relinquish their copyright, some authors have to pay to be published. Accordingly, universities repurchase the research results of these authors at a high cost after having paid their salaries, not to mention the fact that these researchers have been awarded research grants by the government. Researchers produce virtually all of the content found in university libraries.

Next, let's discuss the legislative amendments enacted in 2012.

Quebec universities welcomed the Copyright Modernization Act, which amended section 29 of the Copyright Act, adding, as you know, education to the fair dealing exception.

Quebec universities wish to highlight the goal sought by the legislator, which is basically set forth in paragraphs (c) and (d) of the summary of the act. The paragraphs read as follows:

> (*c*) permit businesses, educators and libraries to make greater use of copyright material in digital form;
>
> (*d*) allow educators and students to make greater use of copyright material.

Now let's look at Supreme Court of Canada case law.

Quebec universities support the principles applicable to the field of education, which were set forth by the Supreme Court of Canada, namely that the purpose of the Copyright Act is to maintain a balance between the rights of users and the owners of copyright.

The fair dealing exception is a right for users and must not be restrictively interpreted. Schools use materials for teaching purposes. When using publications for students, professors seek to provide them with the educational material that is required for their learning. Professors and students pursue a symbiotic quest with the same goal.

● (1525)

Quebec universities support the publishing industry. They have not reduced their purchases of new materials for their libraries. Expenditures made by all Quebec universities for the acquisition of documentation have grown from approximately $60 million in 2009-10 to $77 million in 2016-17. This represents a nearly 28% increase. The acquisition of digital collections by Quebec universities represents between 85% and 95% of their acquisition budget for the year 2017-18.

Quebec universities consider that respect of copyright is of the upmost importance. They deploy significant and serious measures.

By way of example, Concordia University has taken the following measures: adoption of a policy, guide, and procedures regarding respect for copyright compliance and a policy regarding intellectual property; staff training for librarians, technicians, and clerks to ensure compliance with procedures and processes; implementation of e-reserves of documents using Ares software; and development and implementation of a workflow and follow-up procedure for all texts put on e-reserves, as well as for course packs.

Now I'd like to share the following observations and recommendations.

The purpose sought by the legislator in 2012 is still relevant in 2018. Maintaining this exception is in no way incompatible with the balance sought between creator-researchers, who own copyright, and users, as is evidenced by the harmonious coexistence of these groups in the unique university setting we have described.

Restricting the scope of the fair dealing exception would have significant adverse consequences on the cost of education for students, as well as on the quality of teaching and the content of teaching material.

Finally, educational institutions must have the right to fairly use works in the form of teaching materials for the benefit of students, without fear of litigation. We must stop considering fair dealing as a measure that opposes copyright owners and users, particularly in a university context. Going backwards would be counterproductive and would be a disservice to all. Education in the 21st century requires means that are adapted to a rapidly evolving world.

Thank you for the opportunity to make these remarks. I remain available to answer your questions.

The Chair: I'd like to thank all the witnesses for their terrific presentations.

We will begin with Mr. Baylis.

Mr. Baylis, you may go ahead for seven minutes.

Mr. Frank Baylis (Pierrefonds—Dollard, Lib.): Thank you, Mr. Chair.

My question is for Richard Prieur.

You said that the fair dealing exception for educational institutions was out of step with the global trend.

What is your take on the global trend? I thought what we had here was similar to what was happening in Europe right now.

Mr. Richard Prieur: On the contrary, it is not out of step with the global trend. The trend around the world right now is to copy what Canada is doing, but Canada is setting a bad example internationally, and publishers object to its approach.

I listened to Mr. Sapp's and Mr. Lecorps's presentations. I completely agree with the fair dealing principle, except that the numbers don't add up. It's well and good to say that universities and bookstores buy a lot of books, but it's important to really look at the sales figures in Quebec. In 2012, the Observatoire de la culture et des communications du Québec, or OCCQ, pegged new book sales at $780 million, if I'm not mistaken. Benoit Prieur can correct me if I'm wrong, since he's better with numbers than I am, but that same market is valued at $600 million today, so about a 25% drop.

● (1530)

Mr. Frank Baylis: Does that decrease apply to print books or electronic books?

Mr. Richard Prieur: It applies to print books, the ones people purchase from retailers, university co-ops, bookstores, places like Walmart and Costco, and so forth. It corresponds to book sales. I can't wrap my head around the claim that book sales are on the rise and that people are buying more books on the whole. The reality is book sales are down.

Internationally, a country that is setting a good example is Australia, where students clearly objected to the fair dealing principle. They understood that they were the creators of tomorrow and recognized the importance of being fairly compensated for their work.

Universities maintain that they buy a lot of books, but they could afford to buy many more, if they didn't become embroiled in lawsuits against the Access Copyrights and Copibec of the world. Their logic is flawed, as I see it.

The impact on students was brought up, but do you know how much students have to shell out for Copibec? Tuition in Quebec is about $3.000, and I believe the portion students are required to pay Copibec for copyrighted material is around $13.50. Nowadays, that's about the cost of two beers. Back when I was a student, it would've bought four beers. Regardless, what students are paying is $13.50 each. We can talk numbers all day long, but when students are paying $3,000 in tuition and $13.50 of that is going to Copibec for the reproduction of copyrighted material, it's really quite little.

Mr. Frank Baylis: First, it is in our interest to protect publishers and creators in Quebec and Canada.

Mr. Richard Prieur: Yes.

Mr. Frank Baylis: Does Copibec represent only them?

Mr. Richard Prieur: Copibec collectively manages the rights of all publishers around the world whose works are photocopied or used by colleges, universities, elementary schools, and high schools in Quebec.

Mr. Frank Baylis: What percentage of those works are Quebec or Canadian products?

Mr. Richard Prieur: I don't have that number. You'd have to ask Copibec. Frédérique Couette is here, so she could answer that.

I wouldn't want to give you any wrong information, but I would say that Copibec deals primarily with Canadian content and French-language Quebec works, in particular, since French is the predominant language of instruction in Quebec's education system.

Mr. Frank Baylis: I'd like to briefly pick up on my first question about the global trend. You mentioned Australia, where students have a different view from Mr. Lecorps's.

Are other countries moving in the same direction as Canada? Talk a bit about that, if you would.

Mr. Richard Prieur: Indeed, there are other countries that are favouring the use of fair dealing for the purpose of education, but we may be to blame because we weren't diligent enough in 2012. Stakeholders in those countries are being more mindful than we were by calling on their governments to better control and define fair dealing for the purpose of education.

Mr. Frank Baylis: Would you like to see stricter control? Are you completely opposed to fair dealing for the purpose of education, or would you like to see it subject to tighter control?

Mr. Richard Prieur: We aren't completely opposed to fair dealing. It's a principle we've always supported, and, in fact, we've done that for clients who have reading difficulties. Publishers are the ones who do that, in other words, they adapt works to the needs of those clients. We aren't against the principle of fair dealing as long as it is controlled in a meaningful way. We agree on that. What I would really like to see, though, is how education is defined.

Mr. Frank Baylis: I see.

Mr. Sapp, I gathered from your presentation that you do not want any changes made to the fair dealing provision. You want to keep it exactly as is. You don't want tighter control. Is that correct?

Mr. Nicolas Sapp: Yes. We want the fair dealing provision to stay as is. That is our position.

Mr. Frank Baylis: Mr. Prieur thinks Canada should take a stricter approach. Are you against that?

Mr. Nicolas Sapp: Yes, absolutely.

Quebec's situation is unique because of Copibec. It plays a major role. It may be just $13.50 per student, but keep in mind that amounts to $2,372,000 for the three universities we represent.

Mr. Frank Baylis: That's more than $2 million going to Copibec, then.

How much do you spend in total to obtain copyright permission?

● (1535)

Mr. Nicolas Sapp: I have the figures for Concordia University.

Mr. Frank Baylis: Can you share them with us?

Mr. Nicolas Sapp: Yes, I just need a moment to find them.

Mr. Frank Baylis: If you don't have them handy…

Mr. Nicolas Sapp: Here they are. I expected this was something the committee would ask.

For Concordia University alone, we are talking about $573,000. On top of that is the cost of what are called pay-per-use licences, or specific authorizations, which are necessary when content use exceeds the 15% limit allowed under the reproduction rights licence. Specific authorizations cost $70,000, and the photocopy cost is around $50,000, so that's an additional $120,000.

Mr. Frank Baylis: I was actually referring to your total expenditures. You said you spent millions and called the system an oligopoly. How much do you spend in total on acquisitions?

Mr. Nicolas Sapp: Concordia University's head librarian is here with me, so she could tell you exactly how much in terms of the library's budget.

Mr. Frank Baylis: Unfortunately, I'm out of time.

You said the total amount was going up. Can you provide us with a breakdown of the exact amount paid to Copibec every year since 2004, versus total spending for that year?

Mr. Nicolas Sapp: Yes.

Mr. Frank Baylis: Very good.

Thank you.

The Chair: Thank you very much.

Mr. Jeneroux, you have the floor for seven minutes.

Mr. Matt Jeneroux (Edmonton Riverbend, CPC): Thank you.

I'm going to switch to English.

[*English*]

Thank you very much. I am also very interested in the numbers that Mr. Baylis was going after. I was going after those too, so if we could finish up Mr. Baylis's line of questioning before we go into my questions, that would be great.

Mr. Nicolas Sapp: Yes, of course.

[*Translation*]

Concordia University paid $573,000 to Copibec. In addition to that, the university spent $70,000 plus $50,000 on pay-per-use licensing, or specific authorizations. The total amount, then, spent by Concordia on Copibec licensing was nearly $700,000.

If you'd like more exact figures related to purchasing and the library, Mrs. Beaudry could provide those.

Ms. Guylaine Beaudry (Vice-President of Digital Strategy and University Librarian, Concordia University): Good afternoon.

[*English*]

At Concordia we have an acquisition budget of $7 million per year, of which 90% is devoted to digital resources. Of this number, we have the Copibec licence where we have $500K, and only $70,000 only for the digital resources that we put on e-reserves. Those are the book chapters, articles from journal issues that we put on e-reserves. There is an additional $50,000 that we pay for course packs, the print material.

Mr. Matt Jeneroux: Perfect.

I'm trying to wrap my head around some of the differences at Concordia University. It sounds like you speak for two other universities as well at the table here. With regard to the relationship with Copibec, we saw a university before us yesterday that opted out of the Access Copyright portion, the Copibec equivalent.

I'd like to know the reason you're staying with Copibec as opposed to opting out. What, perhaps, is the value added for why you would stay with them?

[*Translation*]

Mr. Nicolas Sapp: Concordia decided to negotiate an agreement with Copibec because it does, after all, provide a framework and make tracking easier. That's why Concordia University chose to enter into an agreement with Copibec.

[*English*]

Mr. Matt Jeneroux: Okay.

Does the Copibec licence prevent faculty, staff, and students of Concordia from relying on fair dealing?

[*Translation*]

Mr. Nicolas Sapp: The Copibec agreement sets out a usage limit of 15%. Universities pay $13.50 per full-time student and, under the agreement, are allowed to reproduce up to 15% of the publication. Anything over that threshold requires the university to obtain specific authorization at an additional cost.

For works not covered by the Copibec agreement, Concordia negotiates directly with the publishers or copyright owners.

● (1540)

[*English*]

Mr. Matt Jeneroux: That would be different from the case for other schools we've heard from.

We've seen that 10% is what other universities...the fair dealing component.

So you're saying that Concordia and other universities are different?

[*Translation*]

Mr. Nicolas Sapp: No, those are the terms of the Copibec agreement in Quebec, which was signed by the three universities I am representing today. It is the same agreement signed by the vast majority of Quebec universities, and it very clearly sets the usage limit at 15%.

The 10% you're talking about comes from the content use guidelines followed by most Canadian universities.

[*English*]

Mr. Matt Jeneroux: Okay.

That helps clear that up. Thank you for doing that.

Let's move to the Prieur boys, either one.

In June 2017, BookNet Canada published a report called "The State of Digital Publishing in Canada". In that study, they found that the sale of digital books has actually begun decreasing from 88% in 2014 to just 54% in 2016. The reason cited for this decline includes Canadians rediscovering the tactile experience of print books as well as digital fatigue.

On the other hand, BookNet found that the sale of audiobooks has skyrocketed, from 16% in 2015 to 37% in 2016.

Recognizing that the data is a little bit old, from 2016, could you comment whether you have seen this trend continue in your sector?

[*Translation*]

Mr. Richard Prieur: I'm not sure I understand your question. Are you asking about the drop in digital book sales?

[*English*]

Mr. Matt Jeneroux: I mean audiobooks specifically—from 16% to 37% from 2015.

[*Translation*]

Mr. Richard Prieur: I can't really answer that because French-language audiobooks aren't that popular in Quebec. The decline in digital book sales, however, can be explained in a number of ways.

There was a big appetite for digital books when e-book readers first came out, in other words, tablets, iPads, Kindles, Kobos, Sony Readers, and all the rest. People discovered these devices and got into digital reading through the hardware.

That appetite then eased off. At that point, ANEL did something that the libraries will probably recognize. Quebec publishers, together with other players in the book chain and public libraries, introduced the concept of digital book lending at libraries. All of a sudden, we saw a phenomenal increase in digital book sales, as far as our catalogue went, with every public library in Quebec purchasing digital books. The flip side was that it hurt digital book sales going forward, because people could, of course, access the books for free at their library.

The other problem when it comes to digital books is the lack of data. BookNet Canada does have some data, but the big players in the digital world, the multinationals such as Amazon and Kobo, are extremely reluctant to share their figures, so that makes it pretty hard to determine actual market penetration, at least in the French-speaking population.

As I mentioned earlier, the OCCQ estimated that new book sales represented $600 million, putting digital book sales in Quebec at $7 million. That number, however, is based solely on digital book distributors in Quebec and accounts for a small fraction of the total. All that to say e-books are not as popular as you might think.

As I said, though, piracy is rampant in the world of digital books, which are shared freely on websites like Facebook. We thought the act would help combat that phenomenon, but, quite the opposite, piracy has continued to rise. We contacted the RCMP to see what recourse we had, but the force told us it was completely powerless to deal with the problem. We understand the challenge it represents. The fact of the matter is there is no real front line to address the issue.

Why isn't the digital book market thriving? Why are sales dropping? Because people can easily access digital books for free, whether it's a pirated version or an e-book at their local library.

● (1545)

Mr. Benoit Prieur: I'd like to say something quickly, if I may.

In response to a member's question earlier, Richard Prieur talked about the change in book sales in Quebec. There is no denying that sales have declined. Richard said that sales had dropped by 25% over the past decade, and that is true. The increase in digital book sales has slightly offset the drop in print book sales.

For the purposes of today's discussion, it's important to note that textbook sales are down the most. By that, I mean books normally purchased by elementary and high schools, as well as colleges and universities. That's the market that has been hit the hardest.

The Chair: Thank you very much.

Mr. Masse, you may go ahead. You have seven minutes.

[*English*]

Mr. Brian Masse (Windsor West, NDP): Thank you, Mr. Chair. Maybe I'll carry on with that discussion.

Generally speaking, the testimony we have received over the last number of weeks in Ottawa and Halifax has been that there has never been a time when universities and others have purchased more. They claim that there has been more spent than ever before.

Now, I know for a fact that the cost of tuition and education has not gone down; actually, it has disproportionally gone up, when you look at the cost of education over this period of time.

Putting that aside, you also have artists who have come to us since that time saying that their revenues are down quite significantly. Last night's testimony in Halifax was that people are losing up to two-thirds to sometimes four-fifths of their royalty income.

We have these kinds of imbalances here. Where do you think the money is going? Or are we—maybe not intentionally—being misled? What is happening? We are being told consistently that purchasing is way up, production is still there, and artists are getting less.

Does anyone want to take a crack at this?

[*Translation*]

Mr. Richard Prieur: I kid you not when I say that a lot of money has stopped going to creators and authors, whether in the book or music industry, because it's going to those making the hardware, in other words, technological devices.

Some colleges have opted to give every student an iPad. Schools have also begun incorporating digital interactive whiteboards into classrooms. I believe Quebec's education ministry spent more than $200 million on interactive whiteboards and $40 million on educational content. Educational content is akin to literary materials, if you will. What is happening in today's society is that money is being invested in technology, whereas, in the past, that money would have gone elsewhere. When I was in college and university, I read print books. We didn't have iPads or computers. Seeing where I landed in life, you might say it didn't make much of a difference, anyways—that time, I was kidding. At the end of the day, huge sums are being put towards technological devices and equipment, what I like to call hardware.

I can appreciate why universities, colleges, and schools lament how expensive it is. I think that if the government were to really look at where education dollars are going, it would probably find that less and less was going to authors while more and more was going to the Apples of the world. That's a reality.

I'm not sure whether you have any college-age children, but I think they all get an iPad now, don't they?

[*English*]

Mr. Brian Masse: Actually, they're in grade schools.

[*Translation*]

Mr. Guillaume Lecorps: I'd like to pick up on that point.

All sorts of things are being said, and I think the gentleman raises a very good point. Where is the money going?

Frankly, the Quebec Student Union finds it a bit odd that the decline in book sales is being used as an argument. Although we realize book sales have dropped nationwide, we object to the claim that the decrease is a result of the fair dealing provision. There's no causal link between the two. Mr. Prieur, himself, admitted that the 25% drop in sales occurred over a 10-year period, so, beginning in 2008. The current iteration of fair dealing was not introduced until 2012. On that basis alone, the so-called causal link starts to crumble. We find it strange that it is being held up as an argument.

I'd also like to respond to what Richard Prieur said about Canada being a bad example. In my experience, multiple countries don't tend to follow in the footsteps of one that is setting a bad example. The claim that others systematically, or very often, follow a bad example strikes me as odd. I'd like an explanation of what exactly constitutes a bad example.

In addition, I'd like to respond to the comment that the cost to students is really peanuts. That point was made earlier. The fact of the matter is that universities are spending more and students are paying more. Students are concerned. The Quebec Student Union wants to make sure the new act doesn't create a distorted Robin Hood scenario, in other words, stealing from the poor—students who are struggling financially—to give to other groups who are experiencing hardship. That would be counterproductive.

Thank you.

● (1550)

[*English*]

Mr. Brian Masse: Thank you.

[*Translation*]

Mr. Nicolas Sapp: I can speak from the university perspective. In terms of print versus digital books, the statistics show a 50% drop in print book lending in university libraries across Canada, so Concordia University is not the only institution where that's happening. Consider this: 500,000 print books were loaned out, as compared with 23 million downloads.

The figures clearly show a major trend, which, as you know, is affecting every sector of the economy, not just education. The book industry is merely one of many going through the shakeup.

[*English*]

Mr. Brian Masse: I will be really quick. Overall has it been a positive or a negative? I'm going to come back. I'll have two minutes later.

We're at a point right now where we're probably just reviewing things. Has the situation gotten worse or better for your prospective industry since the new legislation has come into play?

[*Translation*]

Mr. Richard Prieur: You'd like to know what the worst effect on the book industry has been?

Mr. Lecorps said some rather surprising things. Benoit Prieur talked about a 10-year period, I believe. I, however, look at the numbers and—

[*English*]

Mr. Brian Masse: Sorry, we have one minute to go across. I will have more time later to pursue that.

Mr. Guillaume Lecorps: Can you repeat the end of the question?

Mr. Brian Masse: Student debt has just gone up anyway, so is the situation better or worse? We're looking at copyright changes, so have things gotten better or worse?

[*Translation*]

Mr. Guillaume Lecorps: Since the fair dealing provision for the purpose of education was introduced, we've seen the quality and quantity of the sources available to students on campuses go up. That means greater access to knowledge and expertise, which is very much in line with the trend in 2018 towards greater participation in the knowledge-based economy. We are talking about an improvement in both the quality of materials and access to them.

Mr. Benoit Prieur: As an author, I receive royalties from Copibec, and those royalties have decreased over the past five years. Is my situation typical of the overall reality? I don't know. I do think, though, that, on the whole, writers and publishers are worse off now.

Mr. Nicolas Sapp: From the university standpoint, eliminating the fair dealing provision would be the worst case scenario. We would like to see the principle upheld.

The Chair: Thank you very much.

Ms. Ng, you have seven minutes. You may go ahead.

Ms. Mary Ng (Markham—Thornhill, Lib.): Thank you, Mr. Chair.

I'd like to thank the witnesses for meeting with us today.

I'll be asking my questions in English.

[*English*]

Thank you, everybody. I'm going to pick up on the questions my colleagues have asked. The work of this committee will, ultimately, at the end of this, come up with some recommendations on a perspective dealing with copyright legislation, but we've heard a number of things.

We've heard from universities that the copyright legislation has been helpful to enable greater access for their students. We've heard from students and educators that they appreciate having limited access to a wide range of works, so they can provide that to students to enable learning.

We heard that copyright elsewhere and back here is paying less to authors. We certainly have heard from content creators and from authors that their revenues have come down, and from individual publishers that some of their revenues have also gone down. Yet, from a trends standpoint, we've heard that overall revenues have not.

There are gaps here in this particular understanding. We're trying to understand to what extent the act has aided in that, and from where some of those solutions might come.

Yesterday, when we were in Halifax, we heard in testimony that a platform technology could exist out there that would help enable revenues, based on titles and so forth, to go to individual authors on a per chapter basis. That may also help publishers, because those then become transactional licences.

I'm curious. With the advent of technology, and the need for students and young people to learn, and for creators to continue to be incented to create, do people see that platform technology as a solution at all?

● (1555)

[*Translation*]

Mr. Richard Prieur: We can hardly be against technological and scientific progress. There is evidence that new teaching and instruction methods can be effective, as well as new teaching techniques. Keep in mind, however, you're talking to someone who represents people who earn their living by selling their intellect and producing intellectual content. I'm not against the use of technology and digital platforms. I'm not at all against that. All I am saying is that the people who essentially supply the content for those platforms should be fairly compensated. That's all. There's no other answer I can give you.

From my experience, income is down, and if publishers have less income, then authors have less income.

I can appreciate that money is being invested in new teaching methods, scientific advances, technology, and innovative solutions. Innovation is the very reason for this committee, for that matter. The fact remains that you still need raw material to start with. In order for a book to exist, someone has to write it; someone has to conceive of it. Authors have to take the time to reflect on the subject matter. We are talking about books, but the same is true for music. In the music industry, you have songwriters.

If you take money away from creators, clearly, they won't be happy. Since they are already struggling, they will be less than pleased. You will end up with educational content that is sourced left and right—all over the place, really—thanks to freely available material on such sites as Wikipedia, without any real educational oversight or quality control. Then, you will wonder why flimsy educational content is being used to shape the minds of tomorrow's youth, when that educational content used to be supplied by a serious industry that promoted knowledge and academic development. Pedagogical science is becoming a Chinese buffet of sorts. There you have it, my heartfelt appeal.

Mr. Guillaume Lecorps: The elements highlighted by Mr. Prieur echo the considerations covered in our analysis. Tomorrow's youth also has projects. What you suggested in terms of innovation is consistent with what I was suggesting in my opening remarks regarding open education resources.

As we saw earlier, there is an increase in consumer spending and a drop in authors' revenues. We think that one of the solutions is to potentially bring consumers and authors closer together. The idea is to connect content creators with consumers. How would that be possible? Open education resources, for example, can be a publicly funded initiative that promotes the creation of content and makes that content directly accessible to consumers. That would foster accessibility to content and compensate, through public programs, the resources that are created. That way, content can flow and educational materials can be adapted to the language, the various learning realities or the country's distinct populations.

So there are initiatives that follow the 2018 trends. They will help us highlight projects that I sincerely believe will bring the author and the consumer closer together.

● (1600)

[*English*]

Ms. Mary Ng: Do you have examples?

[*Translation*]

Mr. Guillaume Lecorps: There are pilot projects, one of which is currently under way in British Columbia. Unfortunately, I cannot really tell you about it because it is not taking place in the province we represent.

We have heard that Ontario was starting to implement such a project. That is something we are also pushing for in Quebec. We would like to see it implemented. There are also some projects at the federal level. Those kind of projects are starting to emerge as pilot projects. That seems very promising so far, especially in British Columbia, where the findings currently seem to be relatively compelling.

Ms. Mary Ng: Thank you very much.

Do you want to add anything, Mr. Prieur?

Mr. Benoit Prieur: Essentially, the discussion we are having is about the balance between rights holders and users. We are trying to figure out how to strike a balance between those two groups' rights.

I think that everyone is virtuous. Academics and students, like everyone, want copyright to be respected. Industry people also want openness and innovation. We mustn't forget that creators are also innovators. They are risk takers. The quest for balance between the rights of users and those of creators is ongoing.

What divides us, when we think of an organization like Copibec, are essentially money issues. It was mentioned earlier that the fees were $13.50 per student. That is what gives students access to reproduced works today. Of course, everyone has their opinion on that amount. However, when it comes to everything else, those are not significant amounts or amounts that may discourage someone from studying. Maybe some are discouraged by having to pay $13.50, but that is still a relatively small amount. That is what we are discussing today. Those are relatively small amounts that could be increased without anyone in the education system being distressed.

[*English*]

Ms. Mary Ng: Mr. Sapp?

[*Translation*]

Mr. Nicolas Sapp: You are talking about technological solutions or possibilities, but the problem is that our current world is going through technological upheavals. In education, universities are important structures. People forget this, but the iPhone is 10 years old and the iPad is six or seven years old. The iPad, if only in Montreal, put an end to print media.

Of course, collectives that are struggling with those technological upheavals are trying to adapt, as are universities, which are doing their best and are somewhere between the two words. I am sure that, if there were any miraculous platforms, we would adopt them. However, the challenge remains given the fast pace of those changes, the amount of debate on Facebook and the money extracted from that platform, as well as other issues that produces.

The Chair: Thank you very much.

Mr. Lloyd, you have five minutes.

[*English*]

Mr. Dane Lloyd (Sturgeon River—Parkland, CPC): Mr. Chair, my remarks and questions will be in English. My first question is for Monsieur Prieur.

You noted that 10% can be used in very clever ways. Do you have a recommendation for a better way to measure how many pages or what percentage could be used in a way that would better achieve a balance between authors and users?

● (1605)

[*Translation*]

Mr. Richard Prieur: The 10% I was talking about is related to standard practice. Mr. Sapp said earlier that the majority of Quebec universities had an agreement with Copibec, but that Université Laval did not. That university is currently facing a class action suit initiated by authors, publishers and rights holders. Université Laval did not negotiate an agreement and is arguing that fair dealing translates to 10% of a work—one chapter, one poem from a poetry collection or, possibly, one article from a magazine or a newspaper.

That's all fine and well, but what about a book with three chapters?

What about a collection of poetry with five poems?

Those interpretations strain the definition of fair dealing and the percentage of use, especially when it comes to universities.

[*English*]

Mr. Dane Lloyd: Do you have a recommendation? What would be a better measurement system?

[*Translation*]

Mr. Richard Prieur: Yes, the recommendation is that universities should negotiate agreements with collectives like Copibec. That way, it would at least feel like there is an agreement between the two parties. That is the least that can be done. Quebec universities are doing it, with the exception of Université Laval. I don't want to talk about what is happening on the English side, but I think the situation in Quebec is significantly more dramatic in that respect.

[*English*]

Mr. Dane Lloyd: My second question is for Concordia.

Mr. Sapp, you noted that acquisition costs are up. What does this mean? Does this mean the cost of textbooks for resale to students, or is it of works being held in libraries or for personal faculty purposes?

[*Translation*]

Mr. Nicolas Sapp: Significant costs are related to digital content. Certain figures speak for themselves. As the chief librarian mentioned earlier, the cost of digital content has increased signific. tly at Concordia University.

[*English*]

Mr. Dane Lloyd: How are these being used? Are they being used for students? Are these digital and print resources being sold to students, or are they just being stored in libraries for people to use freely?

[*Translation*]

Mr. Nicolas Sapp: The best person to answer this question is Ms. Beaudry.

[*English*]

Ms. Guylaine Beaudry: Those increases are for acquisition of multimedia and digital material. As I mentioned, out of our budget, 90% goes to the acquisition of digital resources.

These are resources for all of our community members, for the entire university community, as is the case for all the other universities in the country, actually. They are for research activities, for learning activities, for teaching activities. Those increases are not really for textbooks. Textbooks usually are paid for by students.

Mr. Dane Lloyd: That leads me to my next question. From your statistics, has the cost of learning materials such as textbooks decreased since fair dealing was put into effect in 2012?

Ms. Guylaine Beaudry: It is quite the contrary, actually. At Concordia we decided, like a few other universities, to buy textbook materials, which was not necessarily the case before, in order to lower the barriers to knowledge and education.

According to the number of students we have per course, we're buying a certain number of textbooks to put on reserve.

Mr. Dane Lloyd: You're buying these textbooks? Are these textbooks then being sold, correspondingly?

Ms. Guylaine Beaudry: They are also sold, yes.

Mr. Dane Lloyd: But is there an inventory? Do you have a lot of excess inventory of textbooks, or are you finding that you're efficiently purchasing enough textbooks and they're being sold correspondingly at about an equilibrium rate?

Ms. Guylaine Beaudry: It's not necessarily that way. The bookstore is selling textbooks to students, and we have a few copies at the library.

Mr. Dane Lloyd: What I'm asking is this. Let's say you buy 100 textbooks for your bookstore. Are 100 textbooks then being sold, or are 90 textbooks being sold? How many are then being sold to the students?

Ms. Guylaine Beaudry: How many are not sold to the students?

Mr. Dane Lloyd: How many are and how many aren't?

Ms. Guylaine Beaudry: I can't really answer that question. I don't know.

Mr. Dane Lloyd: It seems to me that you could buy 100 textbooks, but if the students aren't actually purchasing them, then that's a significant.... If the students aren't buying them, it can't be counted as a cost for their textbooks.

● (1610)

Ms. Guylaine Beaudry: My impression is that the inventory matches the requests.

I just want to make one point here. The scientific publishing market is really at the international level. Ninety-two per cent of our collections are non-literary materials. We love our friends, our publishers in Quebec and Canada, but most of what we're buying is not coming from those publishers.

You don't have *vases communicants*. It's not as though, if we increase our budget, it will have an impact on our literary authors, and even other kinds of publishing activities, authors in Canada—because of the nature of our activities, which is research.

Mr. Dane Lloyd: This is for the other Monsieur Prieur.

It was mentioned earlier by Monsieur Lecorps that there has been a drop since 2008 in copyright, and so fair dealing might not necessarily be the lone culprit in this situation. Would you say it would be a fair comment, however, that copyright has not been respected since before 2012 and that this is why there has been a significant drop during this period?

[*Translation*]

Mr. Benoit Prieur: I talked earlier about the drop in revenues and I provided figures over a dozen years. Since 2012, there has been a clear increase in drops—in other words, an accelerated decline in sales in the book industry. There was recovery in 2017, and we have since noted that the situation has become more stable.

Is there a correlation to be established? Perhaps, but it is certain that piracy, in all its forms, harms the book sector, the book industry. Canadian books, but also imported books. Here's an example. There are companies in the distribution sector that import books published in France, scientific books that are imported in small quantities of 100 copies or 200 copies and are intended for certain colleges in the regions, for example, where specialized fields are studied. Those are expensive books.

Photocopies and piracy mean that ordering those books is not worthwhile. A distribution house can manage a small order of 200 copies for a school because it knows that the copies will be sold. However, when the sales drop, it is no longer profitable for those schools to order them, and as a result, the books become unavailable in French. People from colleges buy books in English.

That is also one of the traps of piracy in the scientific field, in particular, where the production of books in French decreases until, one day, it is no longer profitable. We may be talking about domestic products or even imported products, and that clearly creates unfair situations for colleges and universities.

The Chair: Thank you very much.

Mr. Jowhari, you have the floor for five minutes.

[*English*]

Mr. Majid Jowhari (Richmond Hill, Lib.): Thank you, Mr. Chair. I'll be asking my questions in English.

It's quite clear that we have a dilemma. Our job as the government is to accept witnesses, listen to them, and develop recommendations. Whether that translates into an amendment to the legislation or not, as of right now, isn't an issue.

We've heard from many witnesses that within the "stakeholder landscape", as I call it, whether it's the creator, publisher, distributor, or the end consumer, the cost to purchase is going up, yet the revenue to the creator of the content is going down.

I have also heard that everyone supports the creators, and wants the creators to continue creating. Everyone wants, to a large extent, the fair dealings to continue, because they give greater access and greater equality. What I'm failing to hear from everyone is a concrete recommendation of how to create that balance.

When I listen to you, Mr. Lecorps, you are saying, "Don't touch it. It's great". Out of the 80,000 members or 200,000 students in general you support, you specifically say you want to keep the fair dealing, because one day some of those are going to become authors, and you want to make sure they are supported.

Help us. Come with a few recommendations, even one recommendation if you could, of how can we compensate, given the fact that we live in what you called, Mr. Sapp, technological turmoil and the digital era.

Should the creators all go online, go digital, and put a digital lock on it, and then say that if you want to use it, pay me directly, because that was one of the comments that was made. Anyone can give me their comments. You may start, Mr. Lecorps.

● (1615)

[*Translation*]

Mr. Guillaume Lecorps: I don't want to call myself an expert on the whole issue of copyright.

Mr. Prieur alluded to this earlier: you must examine a number of aspects and types of regulations before you establish guidelines. It is clear from the discussion we are having today that we have a dilemma.

The arguments I am presenting to you are focused on what we consider—and what students consider—to be the best public policy. As you have seen in my presentation, I have really focused not on students saving money, but rather on the resulting public policy in terms of accessibility to knowledge and ability to innovate. I understand that some will bring up the fact that there is another side to the coin, which is completely normal. That said, as far as potential concrete solutions go, I sincerely think that open education resources are one solution, but I don't want to keep repeating that.

I completely agree that other solutions will have to be found. To an extent, the dilemma is that we have to figure out what solution makes for the best possible public policy. In that sense, we firmly believe that preserving fair dealing for educational purposes is exactly what the best public policy would be and the best vehicle for innovation over the coming years.

[*English*]

Mr. Majid Jowhari: Mr. Prieur.

[*Translation*]

Mr. Benoit Prieur: It's true that this is today's dilemma.

On the one hand, people are saying that they want open access to all products, but, on the other hand, they want to preserve copyright —in other words, support creators. So a solution must be found. Simply saying that the best public policy, as Mr. Lecorps pointed out, is to have open access to all products or to have means to have free access to content concretely devalues copyright and impoverishes writers. We have not found any solutions.

[*English*]

Mr. Majid Jowhari: What would you suggest?

[*Translation*]

Mr. Benoit Prieur: I was saying earlier that, when it comes to reproduction, it's about funding. It revolves around the money that will be given to writers and publishers. We note a decline in investment or in money available for writers and publishers. Having more generous licences for writers is a concrete measure, but there is another side to the coin. For universities and students, in particular, that involves investing personal money.

Mr. Nicolas Sapp: It is said that nature abhors a vacuum, and we will definitely need a model that is likely to provide a solution to this problem. However, from the university point of view, we are between the two worlds and are founding it difficult to spearhead the search for a solution.

The Chair: Thank you very much.

[*English*]

Go ahead, Mr. Prieur.

[*Translation*]

Mr. Richard Prieur: I think that authors' texts published for free on the web are wishful thinking. Of course, I am speaking on publishers' behalf because I represent them, but an author, a creator, needs editorial guidance, so publishers are necessary. That is important.

If the Government of Canada wants to resolve the issue of revenues, the issue of fair dealing, and so on, it should commit to enforcing the agreements of collectives. They were not created to make anyone richer, but to represent authors and publishers, such as Access Copyright and Copibec. The same goes for the music industry. Collectives are important.

[*English*]

Mr. Majid Jowhari: Is compliance and enforcement an issue?

Mr. Richard Prieur: To make sure that at least they show some respect to those

[*Translation*]

collectives.

[*English*]

That is not the case. The are being painted as bandits and as people stealing money from colleges.

● (1620)

[*Translation*]

The last thing I wanted to say is that the legislation needs teeth. Piracy exists. Our revenue losses do not stem only from fair dealing, but also from piracy.

The act should focus on that issue, but it has not done anything about it. The rules it has implemented are completely missing the target. It is a toothless act. It would be important for it to have teeth. You are imposing on us, copyright owners, the responsibility of finding those involved in piracy and going after them. The monetary penalties are very small.

So our three recommendations concern piracy, collectives and the resolution of significant issues caused by fair dealing in colleges, universities and schools.

The Chair: Thank you very much.

Mr. Jeneroux, you have the floor for five minutes.

[*English*]

Mr. Matt Jeneroux: Thank you.

I'm going to quickly ask a question about the Copyright Board, but I want to give Mr. Sapp a heads-up that we're going to ask the analyst, Francis, to clarify an earlier question that we asked. We'll get to that after the Copyright Board question, and I'll turn over my time at that point.

Mr. Prieur, you mentioned on a few occasions today that there's a lot of sharing of digital books and that people are using them inappropriately.

Could you comment perhaps on the role that you see the Copyright Board playing in any of this? Has it been helpful? Are there reforms that you would make to the Copyright Board?

[*Translation*]

Mr. Richard Prieur: I don't know what role the Copyright Board of Canada could play in digital file sharing. However, what I do know is that, when a person purchases a digital book covered by acquisition rules, they subscribe to a license, in a way, or a method of use. You can read those rules, which cover about 22 pages, when you purchase a book through iBooks or another application. No one actually reads them, but in reality, the buyer commits to doing something. If they share the book's content, in violation of the rules they accepted, they are committing an illegal action.

How to prevent people from taking those kinds of illegal actions? In my opinion, that is the state's responsibility. Someone, somewhere, must ensure that the rules are being followed. As I was saying earlier, we have tried to talk to the RCMP people, here in Montreal, whose offices are located in Westmount, on Dorchester Boulevard, I think, but they are unable to resolve that situation. So it is really a problem.

All you have to do is go on Facebook to see the number of Quebec books, French-Canadian books, that are available for free, without any kind of potential revenue for the creators and copyright owners.

[*English*]

Mr. Matt Jeneroux: Specific to the Copyright Board, we haven't heard a lot on that.

Are there any comments on any reforms that we could see to the Copyright Board? I was using the digital books as an example of perhaps a reform. Obviously that's not the purpose that went with the question.

Mr. Prieur, do you have any thoughts on the Copyright Board?

[*Translation*]

Mr. Benoit Prieur: The responsibility of finding a solution to piracy belongs to a number of institutions, including the state, naturally. The book industry also has a responsibility. In the book sector in Quebec and French Canada, we have owned up to our responsibilities by legally selling books in digital format. That has clearly had an impact on piracy.

Very soon, in collaboration with Quebec's department of education and higher education, we will see how we can make digital books accessible in schools. At the primary and secondary levels, those books are needed, for example, to help the visually impaired, children with other disabilities or dyslexic children. The industry can implement initiatives in that direction. Nevertheless, piracy remains a major issue within the industry.

● (1625)

[*English*]

Mr. Matt Jeneroux: I just want to save time for Francis.

[*Translation*]

The Chair: Thank you very much.

Our analyst would like to obtain clarifications.

Mr. Francis Lord (Committee Researcher): Thank you, Mr. Chair.

Thank you, Mr. Jeneroux.

Mr. Sapp, you represent three universities that have an agreement with Copibec. Mr. Jeneroux asked you what value added such an agreement has in the current context. You answered that it was a matter of monitoring. Could you please clarify?

Mr. Nicolas Sapp: Absolutely.

That is a framework agreement that helps create guidelines. It also enables universities, their employees and professors who work with materials protected by copyright to comply with Copibec's framework agreement. That agreement is pretty clear on what can be borrowed and to what extent the use of material covered by the agreement can go.

You should understand that Copibec does not represent all publishers, as some are not party to that agreement. We are bound by that agreement.

Ms. Guylaine Beaudry: May I add something?

Mr. Nicolas Sapp: Yes, of course.

Ms. Guylaine Beaudry: In concrete terms, we apply the 15% limit. When professors give library employees a list of texts they want to reserve digitally, which is the case for the vast majority of reserved works, we can very easily see whether the excerpt accounts for 15% of the content. We count the number of pages of the work in question and not chapters. We also have a document we can refer to in our discussions with professors.

In order to be able to report to Copibec on a quarterly basis, we make note of all the decisions we make on texts put on reserve or those we have used to make printed textbooks, or all courses. It is clearly an advantage in terms of what we do on a daily basis with library materials.

The Chair: Thank you very much.

Mr. Baylis, go ahead for two minutes.

Mr. Frank Baylis: Thank you, Mr. Chair.

Mr. Prieur, you said that sales have dropped. Could you give us figures for the period from 2004 to now to show that drop? Can you submit them to our analyst or our clerk?

Somethings else needs to be clarified.

You said that parallel importation undermines access to a variety of titles in Canada. Is there a piece of legislation you would like to see kept? What would you like us to do about parallel importation?

Mr. Benoit Prieur: Regarding parallel importation, I said at the outset that we want the Book Importation Regulations, adopted in 1999, to be kept. That is the only legislative tool that enables us to defend ourselves against importers or people who are engaged in parallel importation.

Mr. Frank Baylis: That is what you want?

Mr. Benoit Prieur: Yes, definitely.

Mr. Benoit Prieur: Since the act is being reviewed, I wanted to point this out.

Mr. Frank Baylis: You just wanted to point out that the regulations should be kept.

Mr. Benoit Prieur: Yes, as we did five years ago and as we do every year. It is vital for the book importation economy. Concerning figures, I don't have them on hand.

Mr. Frank Baylis: Will you send them to us?

Mr. Benoit Prieur: Yes, definitely.

Mr. Frank Baylis: Thank you.

Mr. Lecorps, someone gave the example of Australia, where students decided that they wanted to continue to pay their share. A lot has been said about the fee of $13.50—Mr. Prieur could buy himself four beers, perhaps two nowadays, with that money. Are you against that idea? Would students not want to pay those fees?

Mr. Guillaume Lecorps: Those fees of $13.50 are considered to be a solution that is, frankly, so inexpensive for students. The amount itself is definitely pretty reasonable. On the one hand, people are saying that the amount should be increased, and on the other hand, they are saying that it is currently low. We feel that making a population that is already in a difficult situation, students, pay more to give more money to authors, who really need it, I am sure, is not a solution.

Coming back to my analogy from earlier, playing Robin Hood by taking from people in a vulnerable situation to give to others in the same situation is not a solution we feel is justified.

Some aspects deserve to be examined when the act is overhauled. In our opinion, it is false to claim that fair dealing for educational purposes is a negative aspect. Australia aside, we see that other countries are following the example of Canada's innovative initiative in that regard. It would be counter-productive, in 2018, to make students pay more.

● (1630)

The Chair: A big thank you to all the witnesses.

I know that some questions are difficult, but we have to ask them anyway to be able to put the right answers in our report.

Today, all your answers are on the record. So it will be easy for us to listen to all the testimony again.

The Clerk of the Committee (Mr. Michel Marcotte): The audio recording of testimony will be accessible on the committee's website within a week, and the transcript will be up in two weeks.

The Chair: Thank you very much.

We will suspend the meeting for 15 minutes.

● ——————— (Pause) ———————

●

● (1640)

The Chair: Thank you very much, everyone.

Today, we are hearing from: Pascale St-Onge, President of the Fédération nationale des communications; Martin Lavallée, from the Coalition for Culture and Media; and Patrick Curley, President, Business and Legal Affairs, Third Side Music.

Each speaker has seven minutes for their presentation. Afterwards, we will go to questions and comments, and every member will have about seven minutes. We try to keep to the allotted speaking time.

We will start with Ms. St-Onge.

Ms. St-Onge, you have the floor for seven minutes.

● (1645)

Ms. Pascale St-Onge (President, Fédération nationale des communications): Thank you, Mr. Chair.

Mr. Chair, members of the committee, thank you for giving the Fédération nationale des communications an opportunity to speak to you on the review of the Copyright Act.

The Fédération nationale des communications, or the FNC, represents about 6,000 individuals who work both in media—print media, televison, radio or digital media—and culture—museums, crafts, performing arts or festivals. Today, my main point focuses on the problematic situation for journalism in the digital age and its repercussions on the copyright issue.

The world of information is going through an unprecedented economic crisis that is threatening its survival and, by extension, the foundations of our democratic society. The problem is not that the information is no longer bringing in revenue, but that the money is no longer in the hands of those who produced the information. It is said that, this year, over 80% of advertising revenues will go to Facebook and Google, while they are investing practically nothing in information content. A large portion of the traffic on their platforms stems directly from the sharing of journalistic works produced at a high cost by our traditional media.

In its current form, the Copyright Act does not address that new reality. We now have an opportunity to implement solutions to help journalists and publishers get new revenues for their journalistic works. In Europe, a number of initiatives have promoted the concept of neighbouring rights, which intervene when revenue collection stemming from copyright application is impractical, even impossible. Those new rights aim to obtain from web giants part of the revenues they get from journalistic works that are being shared without the authorization of rights holders.

The FNC's first recommendation is to amend the act to provide for, as in the case of remuneration rights already recognized under section 15 and subsequent sections of the act, the creation of a right to remuneration in exchange for the reproduction and public communication of journalistic works on the web. To that end, and to highlight the substantial contribution of journalistic work to democracy, the act should also provide for journalistic works a definition that would in part be inspired by the definition already found in the Journalistic Sources Protection Act. The definition could read as follows:

> journalistic work: a work resulting from the work of a journalist and consisting in the collection, editing and production of information to be distributed through media, and produced in accordance with recognized ethical standards.

Since the key, when a new right is introduced, rests in the ability of rights holders to have the right applied, and since negotiations between journalists or publishers and web giants is nearly impossible and potential legal proceedings would lead to unaffordable costs, the FNC proposes a second recommendation, whereby the government would support the creation of one or several collectives for managing journalistic works that would bring together journalists and publishers. The 10 collectives could ask the Copyright Board of Canada to set the fees for the reproduction and public communication of journalistic works on the web.

Since the propagation of expert evidences is bogging down the board, and that leads to significant spending, the FNC submits to Parliament a third recommendation, to follow the lead of the Quebec legislator, which imposed limits in terms of expertise in the new Code of Civil Procedure. That way, the board could limit expert evidence by recognizing either expertise produced for the board or common expertise that would be under the board's authority, with each party covering its portion of the costs proportionally.

The combined effect of the above-mentioned measures would simplify the mechanism for the remuneration of rights holders. Although rights holders would lose part of their individual control over their works, since they would have to join a collective to collect fees, they could also more easily obtain compensation for their works being shared on the Internet. As for the web giants, they would benefit from the fact that the amounts they would have to pay rights holders on a daily basis would be balanced and they would not have to negotiate with each and every one of them. That way, social, economic and legal peace would be ensured.

Fourth, the FNC recommends to tighten up the definition of "information location tools". Since 2012, providers of information location tools have had an advantage over other users.

● (1650)

In fact, the legislator wanted injunction to be the only remedy against a provider of information location tools in case of copyright violation.

There is concern that this exception is an open door to copyright violations, which is the case when an information location tool, in addition to providing website addresses, gives direct access to journalistic works.

As long as a provider is receiving advertising revenue to the exclusion of the owners of websites on which journalistic works are originally published, we are talking about an untenable exception in 2018.

In a context where media revenues are declining, thus compromising the right of the public to quality information, Canadian society cannot afford to wait dozens of years that would be required to give the courts an opportunity to understand, on a case-by-case basis, if not haphazardly, those new provisions of the act. The legislator must take action now and restrict the exception related to information location tools. The survival of properly practised journalism depends on it.

This is why the FNC recommends to tighten up the definition of information location tools to say the following:

> 41.27(5) In this section, information location tool means any tool that makes it possible to only locate information that is available through the Internet or another digital network without approving or encouraging access to the content covered by copyright.

Thank you for listening. We would be pleased to answer your questions.

The Chair: Thank you very much.

Mr. Lavallée, from the Coalition for culture and media, you have the floor for seven minutes.

Mr. Martin Lavallée (Lawyer, Coalition for Culture and Media): Thank you very much.

I am here on behalf of the Coalition for Culture and Media, which is a group of organizations involved in the cultural and media environment, representing hundreds of thousands of creators, publishers and producers in Canada.

Those organizations have identified, among other things, urgent amendments to be made to the Copyright Act, as the Canadian cultural community is experiencing the negative repercussions of the most recent changes to the act. Those changes introduced new exceptions that are harmful to Canada's economy, as they affect the normal use of works. You have received the brief that resulted from our reflections.

Our coalition is proposing three areas of focus to provide an economic and legal environment that would guarantee rights holders the conditions they need to innovate and give us with a rich and diversified national culture.

The first area of focus is to recognize the primacy of copyright.

After all, it is shocking to realize that, in the 21st century, we have to reiterate that the primary purpose of the act is to protect creators' intellectual property and allow them to be compensated for the use of their creative work.

The principle put forward is very simple: partial or total use of another person's intellectual property is prohibited, unless the rights holder gives their consent, either for a fee or free of charge. Every time this right is violated, the very structure that protects creators and all rights holders is weakened. We cannot ignore the growing number of players who are giving access to cultural products, for free or not, and are using them to attract, like Internet access providers, without sharing with the creators of those contents the value added to their company.

In a balanced copyright system, there must be true sharing of revenues and a true recognition of the contribution of cultural products and creators' work. Since 2012, we have rather seen a progressive decline in the participation of creators in the economic life of their works. So Parliament should use the five-year review of the application of the act to become a true standard-bearer for the defence and promotion of Canadian rights holders.

The second area of focus concerns the fact that a plethora of exceptions is in conflict with the above-mentioned principle.

In 2012, the legislator introduced a slew of exceptions to the act, under the pretext of modernization. However, the Berne Convention for the Protection of Literary and Artistic Works, the Agreement on Trade-Related Aspects of Intellectual Property Rights and the treaties of the World Intellectual Property Organization, or WIPO, to which Canada is party, provide that any limitation or exception to the rights of creators must pass what is referred to as the three-party test. So the exceptions must be limited to special cases, they mustn't affect the normal use of the work and cannot cause unjustified prejudice to creators' legitimate interests. A number of exceptions introduced in the 2012 legislation simply do not pass that test.

The parliamentary revision exercise you are engaged in must become an opportunity to improve the economic situation of creators by reducing the number of non-remunerated or poorly remunerated exceptions contained in the act.

The last area of focus is the urgency of re-establishing the balance and equality in our digital world.

Copyright is not an obstacle to technological innovation and effectiveness. Our areas of focus have nothing to do with the so-called fight to preserve an analog economy by resisting the digital economy. Economy as a whole is being digitized and we are perfectly aware of that. We are often in front-row seats to recognize it and be witness to it.

The act should apply completely neutrally, without favouring or disadvantaging a specific form of technology. The introduction of the principle of users' rights in the act weakens the protection of the economic and moral rights of rights holders. Not only are we being told to now interpret the exceptions in the act broadly and liberally, but even authors' reproduction and communication rights—basic rights—are contested by those same users, who have been challenging the legitimacy of those rights since 2012 and are wondering whether they should not be further reduced.

● (1655)

Those attacks on copyright must stop, and Parliament must reverse the interpretation principles harmful to creators that the courts could set out.

At the end of its review, your committee must propose to Parliament amendments to the act, taking into account the three main areas of focus presented to you today.

It is necessary to reduce and tighten up the number of exceptions in the act such as the exception of fair dealing; regulate economic actions intended for Canadians, even if they come from online services abroad; adapt legislative provisions to the technological realities of the market, for example, by including digital audio recorders in the private copying regime; and finally, force Internet access providers to play a bigger role in the remuneration of rights holders.

Those are just the most urgent amendments to be made to the act. I invite you to listen carefully to the individual coalition members who will appear before you over the next few months. They will propose more specific and concrete solutions to implement in each of their sectors.

Thank you for listening. I will gladly answer your questions.

The Chair: Thank you very much.

Mr. Curley, from Third Side Music Inc., the floor is yours.

● (1700)

Mr. Patrick Curley (President, Business and Legal Affairs, Third Side Music Inc.): Good afternoon.

Mr. Chair, committee members, thank you for giving me the opportunity to address you.

I'm going to tell you a bit about what is happening in the field, from the experience of a music publisher.

I was born in Jonquière, in Saguenay—Lac-Saint-Jean. I'm an entertainment lawyer. I studied law at McGill University. I'm also a musician and composer, which led me to found a music publishing company in 2005 called Third Side Music. It became a world leader in music publishing.

We represent a few hundred creators, maybe more, of 50,000 individual songs, including titles by DJ Champion, Florence K, Zachary Richard, the Dead Obies, Lisa LeBlanc, Toronto's BadBadNotGood, Bedouin Soundclash, Tanya Tagaq, Galt MacDermot and many more.

We are strictly independent. Our company is independently financed and is controlled by its Canadian and Quebec shareholders. Our offices now employ 18 people and are primarily located in Montreal. There is a satellite office in Los Angeles.

A music publisher is like an agent for songs. Our role is to generate revenue for songs and their creators by administering rights worldwide. We have gained special expertise that is called "synchronization", which is the placement of music in films, TV shows, video games and commercials.

Let me give you a few examples. People who watch hockey have surely seen the commercial for the iPhone Red. This ad is currently shown during every commercial break. It uses a song that we represent called *That's it, I'm crazy* by Sofi Tucker, a duo from New York.

We recently placed a song by Tanya Tagaq, a singer from Iqaluit, in a commercial for the Apple watch.

The song *Ma rose* by Florence K was placed in a Ralph Lauren commercial.

I'll also give the example of Toronto's BadBadNotGood, who have worked with Kendrick Lamar, Drake and Rihanna. These are big names in pop music and urban music.

The message I want to convey is that we are real business people. It's a real business. We generate substantial revenue that helps our clients, artists, earn a living. We invest in Canadian culture. We promote Canadian culture around the world. We aren't asking for grants, but we are simply asking for a copyright law that protects the creators' right to compensation in an efficient and predictable way.

My first recommendation concerns the Copyright Board of Canada. On August 25, 2017, the board rendered its decision on the tariff for online music services for the period of 2011 to 2013. So the delay is five years, which is completely unacceptable. It's hard to do business when you have no idea what the tariff will be for a period of five years after use. It should be the opposite, meaning that there should be a decision for the next five years.

The board must have the resources to do its job. It must be required to make decisions regarding a reasonable rate. To speed up the process, I recommend that collectives such as SOCAN and Re:Sound have the ability to enter into agreements directly with music users, without having to have the Copyright Board license the tariffs, which imposes an added delay.

With respect to the decisions made by the Copyright Board, we must clarify the basis on which the board works to make its decisions. It should have to be based on the true value of music rights in an open and competitive market. Rates are currently much lower than abroad, particularly in the United States. They are far too low to support the Quebec and Canadian music ecosystem.

In my opinion, this is tantamount to asking Canadian and Quebec artists and creators to subsidize the business models of giants such as Apple, Spotify, Google, Amazon and others.

I also recommend modernizing the Copyright Act to ensure, as Mr. Lavallée mentioned, that Internet service providers have a business model that is largely based on the dissemination of content by Canadian artists, and should pay royalties for that use. Exemptions should be limited and clarified, but they are far too numerous. The private copying regime should also be made technologically neutral.

● (1705)

In Europe, royalties are required on media such as iPads and iPhones. When someone pays $1,000 for an iPhone, it's not a few dollars paid to creators that will prevent the transaction from taking place. Moreover, in all other countries of the world, copyright is maintained for life and for 70 years after death. In Canada, it's 50 years after death.

I don't think it's normal that the heirs of Canadian and Quebec heritage creators such as Glenn Gould and Félix Leclerc are currently better protected in the United States and Europe than they are in Canada. It isn't just a question of the catalogue's value; it's a question of being able to prevent use of the heritage without the authorization of the heirs. I think that is an important point.

In conclusion, I believe that Canada must adopt modern copyright legislation to enable entrepreneurs in the cultural industries, and especially Canadian creators, to continue to promote Canadian culture in the world.

Thank you.

The Chair: Thank you to all the witnesses for their excellent presentations.

Mr. Baylis, you have seven minutes.

Mr. Frank Baylis: Thank you, Mr. Chair.

I'll start with a question about the Internet giants. We talked about Facebook and Google, which are huge companies that make billions of dollars. You all talked about the fact that they aren't paying their fair share. Have I understood that correctly? If so, what would you like the government to do to help Canadian and Quebec creators?

Ms. St-Onge, could you answer my question?

Ms. Pascale St-Onge: Yes. Indeed, Web giants aren't paying their fair share, and they benefit abundantly from content produced, particularly by Quebec and Canadian creators, whether the content is artistic or journalistic.

Our position on copyright is somewhat inspired by the neighbouring rights proposed in Europe. This means, in fact, introducing this new right for the recognition of the public use of journalistic works that report advertising revenues to Web giants.

This is one avenue, but we don't claim it will necessarily make up for all the loss of revenue that the news media are currently experiencing. However, it is certainly a step in the right direction. For us, the other avenues are based on establishing a fund intended for the continuity of information, and it could be established in various ways, such as by collecting royalties.

Mr. Frank Baylis: Would it be a government fund or a fund whose money would come from the Web giants?

If I understand your argument correctly, Facebook and Google are making money using our creators' brains. Are you suggesting that the government create a fund to subsidize these?

Ms. Pascale St-Onge: It could be an independent fund, but the government must be willing to set it up.

However, if we look at what has been done with the Canada Media Fund, for example, we have seen over time that money has gone much more into containers than into content. That's why, to have content that fills containers, we need to find a way to support them. We could create a fund to which companies like Google, Apple, Facebook and Amazon, or GAFA, would be asked to contribute in the form of royalties, which could be direct royalties or royalties on the profits they generate in Canada. It could also be a tax on advertising revenue, for example. There are various avenues to explore, and the money invested in this fund could be distributed to those who produce the content. That's what we did in the television field in Canada in the 1990s when the Canada Media Fund was created.

We are moving away a bit from the subject of the Copyright Act.

Mr. Frank Baylis: With respect to television, the problem, the challenge, is that the government controlled the bands in the case of television, but nowadays we don't control the Internet. Indeed, the government sold a channel and its owner gave the government back a certain amount that was paid into a fund. However, we don't manage the Internet's use. Things don't happen the way they used to, in the case of television.

Ms. Pascale St-Onge: The fact is that radio waves are public. That's one of the reasons the government set up the Canada Media Fund. In reality, it's also because the cable companies made a lot of money with the content. As a result, they were used to fund the system and enable a major television production system to emerge.

● (1710)

Mr. Frank Baylis: It's your turn, Mr. Curley.

Mr. Patrick Curley: What worries me is that often in this debate creators have been pitted against consumers.

I don't understand that logic, especially when we're talking about the giants. I'll just mention the example of Apple Music or Spotify. A Spotify subscription costs $10 or $12 a month. The company is making incredible profits. If the rate payable to the creator is increased, we'll get money that is currently remaining in the hands of the Web giants.

I don't think it's about taking something away from consumers and giving it to creators. The giants are companies worth billions of dollars. Spotify was listed recently, and I don't remember how many billions of dollars it is worth. It seems to me that a certain portion of that value should go to the creators, because the purpose of the business is to sell music.

I don't understand why we can't ensure that Canadian and Quebec creators are paid in a way that supports their work and gives them a reasonable income, considering how the company uses their music.

Mr. Frank Baylis: What do you think, Mr. Lavallée?

Mr. Martin Lavallée: Whether it's the big guys in this world or the companies that make billions of dollars, if the legislation is clear, they'll sit at the bargaining table. If they have a right to release or licences to obtain from certain people, or with respect to the assets they use, they will be at the bargaining table. As an aside, this is why management and other companies exist. In fact, grouping the rights holders within these companies brings bargaining power.

The problem lies in the number of exceptions in the Copyright Act. How do we change things and make sure that the big guys of the world can be at the table? It's simple: you have to make the legislation and their responsibilities clear.

Mr. Frank Baylis: Are there any particular exceptions you'd like to emphasize?

Mr. Martin Lavallée: Yes. There are a few, in fact.

However, understand my situation. I'm not talking on my own behalf or on behalf of my company; I'm speaking on behalf of a coalition. So I'm not speaking for one sector, but for all sectors.

There is the exception of network services. In fact, these people have servers abroad or cloud servers. So there is the whole question of the scope of the Canadian act with respect to reproductions made elsewhere, but which essentially and exclusively serve Canadians. There is also the whole issue of transparency. We are told a lot that it is confidential, how much we can pay and how much income we can earn, but we are not given details in reports.

There is an exception for technological reproduction. Anything resulting from a technological reproduction is an exception under the act.

All these exceptions have a cumulative effect. In short, the giants tell us that they do not really need to sit down at the bargaining table, but they do so to show that they are serious, and they propose a minimal amount. For our part, we tell them that it is not enough. So they oppose, invoking one of the exceptions I just mentioned.

If, during the negotiation, we establish that this exception doesn't apply, then they will move to the second, then they will go to the third, then to the fourth. So there is this cumulative effect comparable to Gruyere cheese—think about the inside of that cheese—and it's very difficult for us, collectively, to sit down, regardless of the platform or sector we represent. The solution keeps coming back: the number of exceptions must be reduced, and they must be made clearer.

A case of technological reproduction was brought before the courts. Most users tell us that their activities are technological. The process, from *a* to *z*, is therefore an exception, since they are all reproductions resulting from a technological treatment.

It is this kind of excess that undermines any negotiation we may have with these people.

The Chair: Thank you very much.

Mr. Jeneroux, you have seven minutes.

[*English*]

Mr. Matt Jeneroux: Thank you.

To continue on that, you're essentially asking for clarification within the act to allow you to better negotiate with these big web giants. That's the role that you're looking for in government. Madam St-Onge, you were speaking of a fund of some sort.

If I can get Mr. Curley and Mr. Lavallée to comment, you're looking more for just the clarification so you can continue to negotiate yourselves. Is that fair?

● (1715)

[*Translation*]

Mr. Martin Lavallée: In the introduction to my presentation, I told you that we had discovered exceptions introduced in 2012 that hurt and reduced our income. This income was fixed either by an administrative tribunal whose function is to assign an economic value to a right, or during free negotiations.

In fact, I'm not commenting on the decisions of each of the sectors that the coalition represents, namely whether they favour any funding or compensation. I reserve this right on behalf of my members.

However, my mandate today is to tell you that there are too many exceptions, that they are too broad and that it is impossible to rely on market forces to determine a solution comparable to what is happening elsewhere in the world.

We said that these companies were the big guys of this world, but these big guys have the world as their playground for negotiation. We realize that this world often asks us how it is that we couldn't get more and that they, they have this or that, private copying in audiovisual, for example. But the answer is very simple: our legislation doesn't allow it.

[*English*]

There are some loopholes somewhere and there is room for interpretation.

[*Translation*]

I apologize to the interpreters for my Franglais.

[*English*]

Mr. Patrick Curley: I'll give you a concrete example. We have an agreement with YouTube in the United States where we get a certain percentage of the money they generate on ad views paid to us as the publisher of the composition that's in the video being used. That is actually generating something now. It should be generating more. Up until recently, they weren't paying anything in Canada because of one of these exceptions, and Martin can advise probably better than me on the particulars. Basically, they claimed there was no right of reproduction in a composition so they didn't have to pay this. They've come to the table, apparently, recently because they had to negotiate some other things where they basically were able to concede that point, so I believe now there are agreements in place. There was a period of five to seven years where we were receiving income for this use in the United States but we weren't in Canada.

Mr. Matt Jeneroux: I guess that's the UGC, the "YouTube exception", if you will. That predominantly was about the mash-ups, the composition piece. YouTube, or Google, is launching here in Canada this YouTube Remix relatively soon. I understand it's within the calendar year. Does that help mitigate some of this now that the streaming...?

Mr. Patrick Curley: You have to consider that the best-case scenario is several years of lost revenue, and again as Martin said, it's a much worse negotiating position right from the get-go.

Mr. Matt Jeneroux: I'll get your comments on that, too, Martin, but I'll just add one more piece to it. If YouTube, Google, launches this new streaming service for music, do you think the UGC exemption should then still continue to apply for the video component of this, or is this just all about the music?

Mr. Patrick Curley: I understand where the exceptions....The idea is that you're giving consumers the ability to do these things. In reality what you're doing is you're giving giants a negotiating tool they can hammer Canadian creators with. That's basically what it comes down to. They are generating billions of dollars on the backs of creators worldwide, but we control to a certain extent what can happen in Canada. Why not give our creators the tools to defend themselves?

[*Translation*]

Mr. Martin Lavallée: I will continue along those lines and respond to your comment.

Each of the artists and creators is quite pro-choice. If they want to give their work for free, they will do so, and if they want to give it at a ridiculously low price or if they want to opt for an open-access program or a Creative Commons licence, they will do so.

There's no problem.

We're trying to protect those who want to live off an economic model and negotiate an agreement with someone who uses someone else's property.

As I told you in my presentation, basically, if someone wants to use someone else's property, regardless of the type of use, they should have the tools to negotiate something on a scale of value, which can range from zero to a maximum value. However, it is fundamentally a question of what the Copyright Act is for and what its primary function is. It's a philosophical question.

Currently, we can't ignore the Supreme Court of Canada's interpretation of the act as currently written. If I may, I will read a quote that shocked us when we heard it.

In 2012, roughly concurrently with the introduction of exceptions to the Copyright Act, the court informed us that it "reflected a move away from an earlier, author-centric view which focused on the exclusive right of authors and copyright owners to control how their works were used in the marketplace".

That's the state of the law in 2012. At the same time, three years later, in 2015, this same Supreme Court tells us that it is not its responsibility, in interpreting the legislation, to do what the legislator, meaning you, chose not to do by adopting it.

In other words, the clearer the legislation and the more targeted the exceptions, the less we will have to fight on just about every point in court, and the less we will have to live with something that says that copyright law—and this is what we've presented to you consistently—should not be author-centric. It's a paradox, and it's nonsense.

This isn't a debate about the digital revolution, and we don't want to go back to the way things were before. On the contrary, we find that in the Copyright Act, for which you are ultimately and jointly responsible, technological neutrality should ensure that, regardless of the technological platform, there is protection that leads to retribution.

Voices: Hear, hear!

● (1720)

The Chair: Thank you very much.

[*English*]

You brought your fan club.

[*Translation*]

Mr. Masse, you have seven minutes.

[*English*]

Mr. Brian Masse: Thank you, Mr. Chair.

Thank you to the presenters for their testimony here today. I want to make sure it's clear that most other countries actually tax them. Is it your position that they should at least be taxed—the web giants that we're talking about here—including those involved in distribution?

Mr. Patrick Curley: Are you talking about GST? I don't understand how they're not, if you're just asking my position. That's more of a government revenue situation. It doesn't really affect the royalties that we get paid, but yes, if you're asking me personally, I think so. Yes.

[*Translation*]

Ms. Pascale St-Onge: The Fédération nationale des communications has repeatedly taken a position that Canada's failure to impose its own sales taxes on digital purchases is an abdication of its fiscal sovereignty. So we are, without question, in favour of imposing sales taxes, as Quebec is doing and is trying to do. It's a must. Legislation, whether tax, copyright or other legislation, must apply on digital and online platforms. Criminal law applies, so I don't see why the rest wouldn't apply to these platforms as well. We think it makes no sense.

Mr. Martin Lavallée: The question answers itself. I spoke earlier about the urgency of restoring equity to our digital world. You have suppliers like Tou.tv and Vidéotron, with Illico. When I rent a movie on Illico, I pay the tax, but when I do it on Apple TV or Netflix, I don't. It's nonsense.

[*English*]

Mr. Brian Masse: I think I see things differently in general terms. As a representative for over a decade, I've witnessed about $10 billion in revenue come into the government from the spectrum auction. In fact, in 2014-15, approximately $7.4 billion alone came from sales at spectrum auctions. The spectrum auction is a public asset. It is no different from our land. It is no different from our water. It is a source of revenue for the general public.

We've had an unprecedented amount of money come into the public realm. Since that time, how much of that has gone to the artistic and creating communities? I think the television fund is a good example of something that was created before. From the spectrum auction, how much benefit do you think artists have received from this public investment that we've had, from the public revenues coming in, as we've seen them struggle going through the digital age and its emergence?

What we're hearing quite clearly, even from testimony in the publishing industry, is that, as we move online, creators are not receiving that money, whereas there seems to be billions of dollars for this oligarchic approach internationally, and there are revenue streams, not only just for the government, but also for others, that are unprecedented.

What have you got from maybe a decade of $10 billion of public money coming in?

● (1725)

[*Translation*]

Ms. Pascale St-Onge: We haven't had a penny in terms of journalistic information. Until the last federal budget, the government did not subsidize, or barely subsidized, print media. On the television side, the production of entertainment programs is subsidized—we're talking about independent television production—but in the case of news broadcasts, it is the general-interest television stations that assume the cost. It's obvious from where we stand that we haven't had our share.

[*English*]

Mr. Patrick Curley: As a music publisher, we have a small subsidy from a program called Music Entrepreneur Component, which I believe is partially supported by that particular fund. I know there's more support on the recorded music side, but I'm really not able to comment in any kind of detail.

[*Translation*]

Mr. Martin Lavallée: I think you're talking about what we call the value gap. We use this term in the digital world, particularly in music, but in other areas as well. You talked about oligarchy, individual actors who generate a lot of income by taking advantage of assets, in this case creation, belonging to others. But this wealth is not shared. It is not shared at all in the case of journalistic information—that's what I understand from what Ms. St-Onge said—and the sharing is not necessarily significant in the case of music publishing. This is why we're talking about a true sharing or a real distribution of wealth.

The witness who represented the Union étudiante du Québec talked earlier about taking from the poor to give to the poor. But I think it's a false debate. Indeed, we are talking about situations where someone specifically uses the property of others and the fact that there should be a wealth-sharing system that would involve users for the benefit of others. What surprises me is that the student, generally speaking, is a beneficiary, a user, a user of the work belonging to others.

With your permission, I will turn the floor over to Mrs. Morin.

Mrs. Annie Morin (Coalition for Culture and Media): Good afternoon. My name is Annie Morin. I also represent the Coalition for Culture and Media.

Mr. Masse, if I'm not mistaken, you're referring to spectrum auctions and the amounts that result from them. You asked if money had gone to the creators and artists, since billions of dollars were generated by spectrum auctions.

The answer is no.

● (1730)

[*English*]

Mr. Brian Masse: It's an unprecedented amount of revenue that has been collected in such a short period of time.

[*Translation*]

The Chair: Thank you very much.

We'll continue with Ms. Ng, who has seven minutes.

Ms. Mary Ng: Thank you all for being here today.

I will ask my questions in English.

[*English*]

Thank you very much for coming in today and talking to us.

Each of you separately had talked about how there are too many exemptions and how there needs to be some clarification. Can each of you tell me which ones?

[*Translation*]

Mr. Martin Lavallée: I would tend to say that it's all about them.

This comes back to a point I raised earlier: at the root, we must ask ourselves what the primary function of the act is.

It would be a trap to ask ourselves what a nice balance would be and to decide to reduce the 70 exceptions to 30 so that everyone is happy. I don't think that's the heart of the matter.

We want a fair and balanced copyright law, of course, but one that also protects authors, publishers and producers, all rights holders.

If our mentality is that we have a basic right and that then,

[*English*]

we do a whole bunch of carve-outs,

[*Translation*]

it does not reflect the political will to have strong legislation.

As I explained to Mr. Jeneroux, strong legislation will then allow for negotiations on equal footing, regardless of the players involved. We don't want to give one an advantage over the other. Essentially, the situation must be clear, as you said about the time that the board can take to make its decisions.

You asked which ones, and I listed the ones that were technology-specific. The legislation should be neutral. Why are there specific exceptions to one technology over another?

Basically, copyright is quite clear: a reproduction right, a communication right or a right of first publication relates to recordings, producers, neighbouring rights or copyright. Then there are a host of exceptions that I think should be reviewed. Do we really want to take away rights and weaken the basic protection position that allows creators to negotiate? Shouldn't we review everything, reaffirm the right at the grassroots and then discuss a public right?

I think this choice should be left to creators and rights holders. It shouldn't be imposed by a legislative instrument.

[*English*]

Ms. Mary Ng: Mr. Curley, is that what you meant? Is that a solution where you say we need to give creators the tools to be able to negotiate and to defend themselves?

Mr. Patrick Curley: Yes, absolutely. Again, all these exceptions collectively put the creators and their representatives in a poor negotiating position when you're dealing with multi-billion dollar companies. They are tough negotiators. That's probably a polite way to put it.

It's tough to be negotiating with such a large entity when at the best of times we're relatively small players in the greater scheme of things. At least if you come to the table with all the tools in your tool kit that you need to negotiate the best possible advantages, that's the kind of situation you want to be in. Each one of these exceptions is a leak in the boat, if I can put it that way.

Ms. Mary Ng: Let me understand. If I heard you correctly, creators create their works and through the web giants and the various tools—Facebook, YouTube, Google, etc.—they utilize the content in a whole bunch of different ways. What you're asking us to look at is a way, a method, so that there is some revenue that's negotiated that goes to the content creators, because right now those avenues are where the advertising is going. All that advertising is going thataway and nothing goes to the creators, and you're saying to find a method by which some of that, in some negotiated way, would go back to the creators. Is that what I understand—

● (1735)

Mr. Patrick Curley: I'll give you an example. If you introduce an exception for user-generated content because people want to publish cat videos and then you've got an entity that's making billions of dollars because eyeballs have gravitated this way, basically what the exception does from a collective industry kind of situation is collectively we've lost the ability to negotiate that as a business model, because it's become a business model. Basically, Google and YouTube have turned it into a business model, but we've told Canadian creators that they can't have their piece of it. That's basically what this exemption comes down to.

Ms. Mary Ng: I'd like clarification on your point earlier. I can't quite re-describe it, but you said that the Americans are able to compensate the content creators and Canadians couldn't. Could you just clarify? Do you know what I'm talking about?

Mr. Patrick Curley: Basically, the copyright rules are different. The details of copyright law are different in the U.S. If you're negotiating a deal under U.S. jurisdiction, you're going to be following U.S. copyright law. So it's essentially what I'm saying. These are nuances that have allowed us to generate royalties for this particular type of royalty, which is generating, again, not as much as it should, but it's something, whereas in Canada that basically didn't exist for many years.

Ms. Mary Ng: Do you have data on that, which you could provide to the committee, which would sort of show that in an identical situation there is revenue in one jurisdiction and we don't have it, and the cause of that—

Mr. Patrick Curley: Well, I can tell you just off the top of my head. It's like six figures of revenue that we get from the U.S. and it's zero in Canada, on an annual basis.

The Chair: Could you forward that to the clerk?

Mr. Patrick Curley: Yes. Okay.

The Chair: The important part is that whatever comes out as testimony actually gets included in the report. If it doesn't come in testimony, we can't include it in the report.

Mr. Patrick Curley: Well, I can get you some figures.

The Chair: You could submit it as a brief or even as one-page document.

Mr. Patrick Curley: Okay.

[*Translation*]

The Chair: Thank you very much.

Mr. Lloyd, you have five minutes.

[*English*]

Mr. Dane Lloyd: Thank you.

Thank you for showing up at the panel today. I appreciated the testimony. My first question is for Monsieur Curley.

As a musician and a businessman, can you comment on the experiences of your American colleagues and their interactions with copyright as distinctive from your experience in Canada? Is it better, and if so, why?

Mr. Patrick Curley: Well, if I can flip the question around, I do have a lot of people I talk to in the United States and they wonder what the situation is in Canada. The ones who understand the details of copyright are surprised at.... I'll give you an example.

The U.S. copyright board just announced what the tariffs are going to be for online streaming for the part that goes to publishers for the compositions for the next five years. Meanwhile, we've just had our decision for 2013.

It's not that the U.S. system is better in every way, but it certainly is in terms of security as a businessman, what you're faced with in terms of predicting what your revenues are going to be on a growing basis. Because we are a Canadian company, we do represent a lot of Canadian and Quebec artists. You're in a much better spot when you know what you're faced with. At the present time we don't know what the rates.... You try to guess, but at a concrete level you don't have any security in knowing what the percentages are.

● (1740)

Mr. Dane Lloyd: Mr. Lavallée, we've talked to many witnesses, and you mentioned yourself the term "education" in the context of fair dealing. People have said that this needs to be clarified or that it needs to be restricted. How would you recommend that it be restricted or clarified in a way that respects the original intention of including the word "education"? Or should it just be taken out altogether?

[*Translation*]

Mr. Martin Lavallée: It's not that the solution isn't there, it's that I always wonder about the role of the coalition compared to the role of each of the sectors. I would strongly suggest you ask this question to the Copibecs and Access Copyrights of the world. They will be able to give you an answer.

The other element relates to our general comment. We're talking about "fair dealing". Do you know the test based on six factors? I'm pretty sure you've heard about it. However, if I ask you to apply it, it may be a bit more complicated. The reason I'm talking about it is that the six-factor test is a test that the Supreme Court has proposed to interpret what constitutes fair dealing. This test was brought before the court three times and led to different results each time. The court has agreed to hear cases year after year to try to clarify its position and interpretation.

This is consistent with the comment made earlier that we shouldn't be there at all. We should have legislation that doesn't lead to interpretation every time we ask ourselves the question. So let's ask the question. If fair dealing is about fair dealing for the purpose of education, there will no doubt be 350,000 questions about what education is. Who would it be in relation to? The student, the university or the educational institution?

All these questions lead to situations in which universities, among others—as we see here in Quebec—will say that, from now on, they no longer have to pay and therefore, they no longer pay. It goes back to Mr. Curley's comment and mine, that it takes away our ability to negotiate. The way to deal with that would be to provide clarification.

You asked to compare what is happening in the United States to what is going on in Canada. Do they have a better relationship? However, there is a fundamental difference between fair dealing and fair use. Here in Canada, we have fair dealing and in the United States, it's fair use. The Americans have set very clear rules that are much simpler than the six-factor test and, in a way, respect the Berne Convention on Copyright.

That's where we get back my answer. I know it's not a straightforward answer, but does it hurt the rights holder? Is it limited in some cases?

When it is written in a law that it is "fair dealing for the purpose of education", I don't believe, and the coalition doesn't believe, that it meets the criteria of the Berne Convention.

[*English*]

Mr. Dane Lloyd: This could be the more controversial one. Madame St-Onge, are you aware of and can you comment on the proposed link tax in the European Union? Are you aware of this proposal to subject to taxation the linking of an article from a newspaper or a news aggregator, so that the publishers would have the right to collect a fee per link from websites that carry their content?

[*Translation*]

Ms. Pascale St-Onge: This is somewhat related to what we say in our brief with respect to restricting the tracking tool exception. There is a distinction to be made. Some sites refer us to articles, but don't necessarily provide full access without the user paying an access fee. In addition, there are content aggregation sites, such as Google, that make money and redirect us directly to other sites. There is then no transaction or economic return between the two.

That is why, in order to settle this question, there had been the idea of introducing the right of reproduction and public communication of journalistic works. This could be administered by the Copyright Board of Canada, which could set the appropriate tariffs for this type of digital use. This would encourage a redistribution of revenues, especially advertising revenues, that are in the hands of these content aggregators, without return for those who produce the information.

Perhaps Mr. Tamaro could round out the answer.

● (1745)

Mr. Normand Tamaro (Lawyer, Mannella Gauthier Tamaro, As an Individual): The idea is private copying. One day, the highest English court said that there was a right to musical works and that no one could reproduce them at home, but that everyone did. Since the police and lawyers could not be sent everywhere, a right was created and the licence was issued. The same principle should be applied in this particular case, that is, to establish this form of licence fee, a form of private copy adapted to the journalistic work.

[*English*]

Mr. Dane Lloyd: Are you aware that Spain passed legislation a number of years ago to implement a link tax? It resulted in Google staging a pretty significant exit from the Spanish markets. Do you have any comment on that?

[*Translation*]

Ms. Pascale St-Onge: Indeed, internationally, it may be necessary for all countries to move in the same direction, but Google won't withdraw from all markets that see an injustice in the fact that it accumulates unreasonable profits to the detriment of those that provide the content of its site. This injustice will one day be corrected, and it isn't true that Google or any other platform will deprive itself of a market to avoid paying taxes.

We strongly believe that this is a political will and that it must begin in Canada, among other countries, but all countries are faced with this reality. There are international discussions about attempts at concerted action, but we must also take the bull by the horns and make political decisions that are in the interest of the people and that drive the economy here.

The Chair: Thank you very much.

Mr. Baylis, you have five minutes.

Mr. Frank Baylis: Mr. Lavallée, you talked about a plethora of exceptions. This is how we will proceed.

First of all, there is an act in place. If I understand you correctly, there are certain exceptions that hurt creators' negotiating power. As the chair clearly noted, you may submit those exceptions to us formally in writing. It is all well and good to say that the act needs to be rewritten, but that is not how it works. We will review the act and make recommendations.

You may guide us by pointing out the exceptions that hurt your negotiating power. Tell us how they hurt you and then propose changes. If you can submit that formally to the clerk, we can look at it. Even if we do not agree, it will be in our report. I understand you very well, so I would ask you to do that. Mr. Curley, you may also do that.

Mr. Curley, you talked about the Copyright Board of Canada and that the response times are much too long. Why is that the case? How could the government answer the questions more quickly?

Mr. Patrick Curley: First of all, I think it lacks the resources, so the budgets have to be reviewed. Next, the rules could be amended to require decisions to be made more quickly. Certain collectives have to conclude an agreement, even when they are negotiating directly with a stakeholder, and in certain cases, especially as to the right to communication, they have to go back and have the agreement approved by the Copyright Board, which causes a further delay.

● (1750)

Mr. Frank Baylis: Is the delay caused by a lack of resources? Is that normal? Do other countries have the same delay?

Mr. Patrick Curley: I cannot say because that is not my specialty, but I am sure there are experts who could tell you. What I can say is that it makes no sense.

Mr. Frank Baylis: Would you like to say something, Mr. Normand?

Mr. Normand Tamaro: I would like to comment on what the first person said about the concept of exceptions and the list. It is very hard to create a list, but I can give you a practical example, the exception for educational institutions. Those same exceptions had always been in the legislation. In 2012, the Supreme Court ruled that we had to interpret rights narrowly in order to promote users' rights. These are no longer exceptions, but rights. At the same time, the government created the education exception.

Strangely, the result is that there are many education exceptions for educational institutions and a global exception for education. As a lawyer, I can tell you that, in actual fact, public users have more rights owing to the exceptions, and the education exception is invoked constantly by the users of works. The rights of educational institutions, however, are now more limited than the global exception. In actual fact, it is clear that the education exception is invoked constantly. I see it at the office every day. There are a lot of exceptions.

Mr. Frank Baylis: How can we provide a better framework for this exception?

Mr. Normand Tamaro: We talked earlier about how the act is interpreted. It is true that, oddly enough, the Supreme Court introduced an interpretation in 2004 that let to concrete changes in 2012 and 2015. In 2004, the Supreme Court of Canada distanced itself from the U.S. Supreme Court. At that time, the Mickey Mouse case was before the U.S. Supreme Court. It stated the principle that, under U.S. copyright law, Webster had produced his grammar and supported his family and also provided us with a great dictionary.

Here, the Supreme Court told us that rights have to be limited. People have to earn a living, we know, and someone who does not earn a living does not create. So this concept existed before. Even if someone told me, as an author of books about copyright, that the education exception must be interpreted in the previous framework, I know it has become much more strict now as a result of the very broad education exception, which is not managed for the general public, and as a result of an interpretation that favours users.

In this case, as a lawyer, I think my colleagues opposite would always say that their client does not have to pay, even if they are using a work on the Internet, and clearly for commercial purposes.

Mr. Frank Baylis: I have a quick question for you, Mr. Curley. You said that Canadian copyright fees are lower than those in the United States. Is that correct?

Mr. Patrick Curley: Definitely.

I think that is well known. Mr. Lavallée is perhaps in a better position to comment on this.

The tariffs paid to composers for the use of their songs are much lower, proportionally speaking. I think they are 50% higher in the United States than what is paid here for the same usage. I am not referring to market size, but strictly the percentage. It is much lower in Canada than in other countries.

The Chair: Thank you very much.

Mr. Jeneroux, you have five minutes.

[*English*]

Mr. Matt Jeneroux: This has been a good panel and a lot of information has been provided here, so thank you so far. I'm just going to do a bit of a mash-up on my own, if you will, and hit on three quick topics.

Madame St-Onge, you spoke about the recent $50 million for local news organizations—I don't know if it was in your presentation or one subsequent to it—being distributed through a third party of the government's choosing.

What are your thoughts on the commitments, but also does the latter concern you in terms of compromising the independence of the press?

[*Translation*]

Ms. Pascale St-Onge: As to the $50 million, the Department of Canadian Heritage will certainly be facing some major challenges in terms of finding an independent organization to administer those funds, since that is not identified in the budget. Even that is a challenge, so I think Canadian Heritage will have to look at this.

As to journalistic independence from the government, I have a few answers. First, the CBC/Radio-Canada has been subsidized by the government since it was created, and I think everyone will agree that it is a model and benchmark for journalistic quality and independence.

In order to avoid the appearance of government interference in the operation of newsrooms, the manipulation of journalistic information or political influence over the news media, we need universal programs that apply to everyone who meets the criteria that define the news media today. This prevents cherry-picking and the appearance of favouritism towards one group or another. That should be the first criterion that is considered when public funds are involved. Of course, the more independent from government that the organization administering those funds is, the better.

In journalism today, people have no more illusions about the future, whether you are talking about print newspaper owners or others. Unfortunately, until there is a new business model that suddenly brings in more revenue to those who are producing news content, we will have to find a way to publicly support the production of news content, while at the same time recovering money from those who are currently making huge profits from our members' work.

● (1755)

[*English*]

Mr. Matt Jeneroux: With regard to the Copyright Board, Mr. Lavallée and Mr. Curley, you spoke about the significant delays. Mr. Curley, I believe you said there were delays of five years. Can you elaborate on what the impact of five years, or so, means to some of the creators, the artists?

Mr. Patrick Curley: Well, as a business owner you need to know. In order to make projections, if you're running a business, it's fundamental that you know what the value of your product is. It's unbelievable to me that it takes so long to get these decisions made. If anything, it should be flipped on its head, and you should know, for the next five years, that the rates are going to be *x*, and you could, at that point, make projections of what that's going to mean for your business.

Mr. Matt Jeneroux: Can you provide a concrete example of somebody you know who has experienced this, so that we can have that on the record?

Mr. Patrick Curley: I'll give you a concrete example.

There was a decision a few years ago with respect to the right of communication, and whether a download involved a public performance. At any rate, there was a Supreme Court decision that meant money that was being held by SOCAN, which is a collective that represents composers and creators in Canada.... $20 million was repaid to Apple. It was money held by SOCAN, which should have been paid to creators. There was a huge delay between these lawsuits being instituted and decisions being taken.

Considering that you're talking about companies that have hundreds of billions of dollars in cash on hand, how are we, as Canadians, sending this money back to Apple? It's really difficult to understand, when you have artists and composers who are having a hard time making ends meet.

Mr. Matt Jeneroux: Mr. Lavallée, do you have any comments?

[*Translation*]

Mr. Martin Lavallée: There are three consequences, in my opinion.

First, an exercise to reform the Copyright Board of Canada is underway in another forum, and some of us here are involved in that. Briefs and specific recommendations have been submitted in that forum.

Further, I can tell you that there are three consequences of the time the Commission takes to issue its decisions.

The first is the retroactive effect. The money cannot be distributed to rights holders because we cannot take a risk since we do not know what the final decision will be. There is always a provisional decision, in any case. In many cases, amounts are paid, and they are often minimal because we do not know the final outcome.

Second, there is the whole administrative aspect of the adjustment. That means that if the rate is a bit lower or a bit higher, we have to review millions and millions of transactions, especially in the digital era, and try to make corrections to see what the final result will be. The longer this takes, the harder it is to get that information. Distributors can say they do not have the information, that they did not keep the necessary information to give us what we need.

Third is the uncertainty. Often a tariff is used for certain period of time, and when that period is up and the decision is not yet known, it is not just the rate that is important, but also the points of law. So we all go back to court and are not really sure which points of law we should be arguing, and if we should be arguing them again. We do not have the benefit of the decision and there has been no ruling yet on certain points of law.

Most importantly, we really need to find a way to speed up the decisions.

● (1800)

[*English*]

Mr. Matt Jeneroux: It's my last question. I am being told I'm over the time, but it's not unusual from this chair. I will try to get it in quickly.

Mr. Curley, with regard to the life plus 50 years you referenced in the Copyright Modernization Act, recordings were moved to life plus 70 years. Do you have any comments on the impact that has had? Everything is not life plus 70 years across the board. There's life plus 50 in some aspects, and life plus 70 in some others.

Mr. Patrick Curley: Keep in mind there's a different copyright in a musical composition, meaning the song itself and the sound recording of the composition. Sound recordings have gone to 70 years. Musical compositions in Canada are still life plus 50. I'll give you a concrete example.

A composer whose name was Bert Berns wrote *Twist and Shout*. I'm friendly with his heirs, and unfortunately he died of a cardiac situation in 1968 when he was in his early 30s. His compositions are coming into the public domain in Canada. His heirs are just slightly older than I am. Never mind the economic impact that has; it means they can't prevent any kind of use from happening, so they lose control over any kind of advertiser making inappropriate use of his music. This perhaps hasn't been a major concern in Canada.

Coming up in the next few years are some very famous Canadian composers whose terms are going to expire. I think that one you should keep in mind is Glenn Gould, who died in 1982. Considering how long it takes to modify copyright law, it would be a good idea to make sure we take care of this now so that the rights to Glenn Gould's catalogue don't expire in Canada—knowing there's a really strange situation where you have a Canadian composer who's an icon in Canada, in the public domain in Canada, but not in the United States and not in Europe.

Mr. Matt Jeneroux: Are you suggesting that it be move up to life plus 70 years?

Mr. Patrick Curley: Yes, absolutely.

Mr. Matt Jeneroux: Thank you, Mr. Chair.

Thank you.

[*Translation*]

The Chair: Ms. Ng, you have five minutes.

[*English*]

Ms. Mary Ng: Thank you, Mr. Chair.

Madame St-Onge, I know my colleague asked for written submissions or additional information around exceptions. Do you want to touch on that very quickly, because we didn't get a chance last time? What exceptions in your realm should we be focusing on or looking at?

[*Translation*]

Ms. Pascale St-Onge: In the brief you submitted, let us talk about the exception for retrieval tools. Those include content aggregators such as Google, which provides access to content. Google does not simply refer people; it actually gives them access to content. Some companies or individuals even pay to be ranked higher on Google. So companies like Google make money in multiple ways from content production, even though they give free access. Since they make money from that free access, they should give back part of that money to those who created the content.

We focused on this tool in particular, but I think Mr. Tamaro has identified other exceptions in the act.

● (1805)

Mr. Normand Tamaro: I will limit myself to the comments I made about a practical exception. The reality is that the exceptions have become incomprehensible. You have to reread them constantly to be able to tell someone whether an exception means one thing or the opposite.

We could say that, prior to 1997, the act was written in the French style, since it was based on the Berne Convention, which reflected a certain writing style at the time. Now, all of a sudden, the wording has become exceedingly specific. As any lawyer knows, there is a risk in trying to be very specific. In trying to be very specific, one forgets things that were already included and then things become irreconcilable. The current act has more exceptions that rights.

For the average person, it is certainly incomprehensible. I would like to add something about the final exceptions.

Children at school can use works on the Internet, as they are and without notice. Freedom is great, but we are not teaching our children what copyright means. People do not know how artists actually make a living. Copyright does not mean anything to them. It is not like a paycheque that an employee gets at the end of week's work.

Let me be clear. I am not saying that I want children to pay to consult those works. The simple fact that they can freely use content at school means they will never recognize how a creator earns a living. Since they will not be aware, it will be hard for them to respect the right, even if they are in good faith, because they will not even know that the right exists.

[*English*]

Ms. Mary Ng: Thank you.

Madame St-Onge, you talked about the government supporting a collective or a management group for journalists and editors. Can you expand on that a little bit by way of a recommendation or a solution? Can you help us understand that better?

[*Translation*]

Ms. Pascale St-Onge: If reproduction and public communication rights were recognized in the Copyright Act and were applied, that would mean that digital platforms would have to pay royalties for copyrighted material. That does not necessarily mean exorbitant tariffs.

The idea of creating a fund for the long-term survival of the news is not at all part of the recommendations on the Copyright Act that we made following the last federal budget.

What we want to see is a way of providing financial support for the news media that create content. Supporting newsrooms is extremely expensive. Journalists who conduct investigations for weeks and months, sometimes without producing an article, run up costs, with very little in the way of advertising revenues thereafter, especially in the digital age.

There are a number of ways to create a sustainability fund for the future of news. We could require royalties from GAFA companies or tax online ads on Google or Facebook, for instance. Such a tax of 5%, let's say, could be paid to the consolidated fund for the future of news or artistic content.

There are ways of making those who profit from Quebec and Canadian content contribute their share. There are also the Internet service providers.

I talked about the creation of the Canada media fund from royalties on cable subscriptions. People are increasingly dropping cable and using content provided by Internet service providers. Why not require those Internet service providers to pay royalties? In many cases, they are the same companies. Why are there no royalties on Internet subscriptions?

These are the kinds of questions we need to ask. There are a number of possible approaches. Now we simply have to take the bull by the horns, muster the political will, and defend our creators and content producers here.

● (1810)

The Chair: Thank you very much.

Mr. Masse, you have the last question.

[*English*]

Mr. Brian Masse: Thank you, Mr. Chair.

I'm still obsessed with spectrum auctions, because in 10 days from now the government will receive another cheque for 4G allocation from 10 bids coming in, and there will be an upcoming 5G allocation that will probably bring it to over $1.5 billion, which is what's expected.

Do you think there would be support in the creative community to do something I've advocated for, which is, when we're auctioning off the spectrum, to have assets from that spectrum go to the creative community? For example, we are continuing to see the evolution of the spectrum, which in my opinion is a public resource and asset, and hence we are the landlord of this resource. We own it and we are renting it out. If we set the terms and conditions for that to be done, would it be something that the creative community would be open to as a policy, a robust policy, on how they could be included? If this were done, when spectrum is introduced, especially now as we go to 5G, you might have changes and shifts in the artistic community's whole lifestyle, because it's going to change the use of it as well. Wouldn't it actually open the door to have a robust policy on this? I just open this up. Would there be an openness among the community to sit down and do that?

[*Translation*]

Ms. Pascale St-Onge: That is certainly one way of going about it. It depends on the approach that governments take. Right now, there is not really any tax on the sale of the spectrum, and everything goes directly to the treasury. So it would be entirely possible to establish a new approach and to use all or at least a good part of those fund to support the creation of artistic and journalistic content. The government could take that approach. There are similar approaches elsewhere in the world. In the United Kingdom, for instance, when people buy a television, they pay a tax that goes directly to the BBC.

Why should everything always go to the treasury? We know full way that certain sectors are being penalized right now because our legislative and fiscal framework is not tailored to the digital environment, that we are decades behind as regards the Internet, and that our creators and companies here are suffering as a result. This is a possibility that the government definitely has to consider.

Mrs. Annie Morin: I completely agree with what Ms. St-Onge said.

On the other hand, the current exercise is a review of the Copyright Act.

You are talking about allocating some of the money generated from the spectrum auction. That is a very interesting idea considering that the airwaves, which are a public asset, are used in particular to disseminate works and other content subject to copyright. At the same time, however, we should not focus solely on the possibility of a subsidy fund. Funds are certainly needed, but they should also be used to pay royalties to content creators, and not solely in the form of subsidies.

[*English*]

Mr. Brian Masse: I don't disagree. The problem we're facing is that this is just a review, and in the meantime there will be hundreds of millions of dollars that will pass through the grasp of the creative community as they are impacted by the use of the spectrum they own.

[*Translation*]

The Chair: Thank you very much.

That wraps us our testimony for today.

I want to thank you for your many good questions and answers. They will help us a great deal as we draft our report.

We will now adjourn. We will reconvene at 7:00 p.m. for the town hall meeting. Thank you everyone.

The committee adjourned.

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